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STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD
RIGID PLASTIC PACKAGING CONTAINER INFORMAL RULEMAKING
PROCESS ADVISORY GROUP

JOE SERNA, JR., CAL/EPA BUILDING
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3RD FLOOR
ROOM 350
SACRAMENTO, CALIFORNIA

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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Mr. Bill Orr, Branch Manager, Recycling Technologies

Mr. Ethan Quinn, Staff

Mr. Ted Rauh, Program Director

ALSO PRESENT

Mr. Steve Alexander, Association of Postconsumer Plastic
Recyclers, telephonic

Mr. Tom Busard, Plastipak

Mr. Bill Grigg, California League of Food Processors

APPEARANCES CONTINUED

ALSO PRESENT

Mr. George Larson, Illinois Tool Works and America
Chemistry Counsel

Ms. Carol Livingston, Soap Detergent Association

Ms. Paula Martusi, Wal-Mart, telephonic

Mr. Jack Mcaneny, Proctor & Gamble Company

Mr. Bill O'Grady, Talco Plastics, Inc., telephonic

Mr. Randy Pollack, Law Offices of Randy Pollack,
telephonic

Mr. Dennis Sabourin, NAPCOR

Ms. Dawn Sanders Keopke, McHugh & Associates, telephonic

Mr. Tim Shestek, American Chemistry Council

Ms. Caroline Silveira, GMA

Mr. Ralph Simoni, GMA-FPA

Mr. Parham Yedidsion, Envision Plastics, telephonic

Ms. Amy Zettlemoyer, Wal-Mart, telephonic

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INDEX

	PAGE
1. Welcome/Introduction	1
2. Recap of survey results from 04/17/07 meeting	4
Ground Rules	
Guiding Principles	
3. Review of Draft Regulations	9
4. RPPC Definition	113
5. Product Manufacturer - Definition	15
6. California PCM Consumption Documentation	147
7. Public Comment	
8. Next Steps	177
9. Adjournment	181
10. Reporter's Certificate	182

1 PROCEEDINGS

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: Good morning. This is Mike Leaoon with the
4 California Integrated Waste Management Board. I think we
5 should go ahead and get the meeting started. We do have
6 some housekeeping announcements to go over.

7 First of all, in the event of an alarm, we will
8 need to evacuate the room. And for those of you that are
9 on the phone, that might mean a 20- to 30-minute delay in
10 our meeting.

11 MR. ALEXANDER: You expecting an alarm?

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

13 LEAON: No. But it has happened. And for those of you
14 that are in the room, just follow staff and we'll evacuate
15 the building.

16 Rest room is right across the hallway here. And
17 there is a cafeteria downstairs.

18 Also for those of you on the telephone, if you
19 could keep your phones on mute until you have a question
20 or comment, that helps keep the background noise down
21 here.

22 Also, we do have a court reporter with us today.
23 And if you're on the phone if you could please give us
24 your name before you ask a question or have a comment,
25 that would be very helpful for our court reporter.

1 And with that, I think let's go ahead and go
2 around the room first here and do introductions.

3 MR. SABOURIN: Dennis Sabourin, NAPCOR.

4 MR. BUSARD: Tom Busard, Plastipak Packaging.

5 MR. MCANENY: Jack Mcaneny, Proctor and Gamble.

6 MR. LARSON: George Larson representing American
7 Chemistry Council and Illinois Tool Works.

8 MR. BERUMAN: Jerry Beruman with the California
9 Integrated Waste Management Board.

10 MR. GRIGG: Bill Grigg with the California League
11 of Food Processors.

12 BOARD ADVISOR DAVIS: Rachel Davis with Waste
13 Board.

14 RECYCLING TECHNOLOGIES BRANCH MANAGER ORR: Bill
15 Orr with the Waste Board.

16 CHIEF DEPUTY DIRECTOR NAUMAN: Julie Nauman with
17 the Waste Board.

18 PROGRAM DIRECTOR RAUH: Ted Rauh with the Waste
19 Board.

20 DEPUTY DIRECTOR LEVENSON: Howard Levenson, Waste
21 Board.

22 STAFF COUNSEL BRANCH: Harllee Branch with the
23 Waste Board.

24 STAFF COUNSEL TYSON: Tamara Dyson with the Waste
25 Board.

1 MS. SANDERS KEOPKE: Dawn Sanders Keopke, McHugh
2 and Associates.

3 MS. LIVINGSTON: Carol Livingston with the Soap
4 and Detergent Association.

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
6 LEAON: Okay. That's everyone in the room. For those of
7 you on the phone, if you can give us your name and
8 organization.

9 MR. POLLACK: Randy Pollack, Office Depot.

10 MR. YEDIDSION: Parham Yedidsion, Envision
11 Plastics.

12 MR. O'GRADY: Bill O'Grady, Talco Plastics.

13 MR. ALEXANDER: Bill Alexander, Association of
14 Postconsumer Plastic Recyclers.

15 MR. SHESTIK: Tim Shestik with the American
16 Chemistry Council.

17 MS. ZETTLEMOYER: Amy Zettlemoyer, Wal-Mart, Inc.

18 MS. MARTUSI: Paula Martusi, Wal-Mart, Inc.

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
20 LEAON: Is that everyone on the phone?

21 MR. BERUMAN: Mike, before we get started, can I
22 ask the people on the phone who are using GoTo Meeting, on
23 your computer screen, are you seeing the first page of the
24 PowerPoint presentation currently, the rigid plastic
25 packaging container informal rulemaking?

1 MR. ALEXANDER: Yes, sir.

2 (Thereupon an overhead presentation was
3 presented as follows.)

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: Okay. I'll go over the agenda this morning. Want
6 to take some time to briefly review the comments we
7 received on the draft regulations. Then I'll take some
8 time to actually walk through the proposed changes to the
9 regulations. And then we want to spend some time talking
10 about some specific issues in the morning session.

11 And in the afternoon, we actually want to do a
12 little brainstorming on some of the issues we think are
13 going to take a little more work. We'll begin by going
14 over the survey results from the April 17th meeting.
15 We'll cover ground rules, regulatory changes, and briefly
16 overview our guiding principles.

17 --o0o--

18 --o0o--

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

20 LEAON: The role of the Advisory Committee, briefly to
21 recap that, we're looking for comment and input from the
22 Advisory Committee to guide us in making changes to
23 recommend to the Board on the regulations. We did have a
24 meeting on April 17th to talk about regulatory concepts.
25 And I want to thank the Advisory Committee members for

1 getting comments to us and for your valuable feedback.

2 We also asked the Advisory Committee to complete
3 a survey to help us prioritize the concepts that were
4 discussed at the April 17th meeting. And we did a
5 weighted scoring of those issues. And the top issue was
6 source reduction, followed by:

7 RPPC definition, penalties, factors, and
8 calculations that go into those;

9 Definition for postconsumer material;

10 Documentation for California postconsumer
11 material credit;

12 California plastics diversion meaning supporting
13 diversion here in California;

14 Also container manufacturer responsibility which
15 is associated with the documentation requirements for the
16 California postconsumer material compliance option;

17 Also postconsumer material supply, which is again
18 an issue related to supporting collection;

19 And then also product manufacturer definition,
20 which based on the written comments we've received.

21 Actually, we relegated that to an issue we want to address
22 in the afternoon because we think that's a key definition
23 that was reflected in the written comments we received.

24 So I want to thank the Advisory Committee for
25 their work to date and appreciate you being here today

1 again.

2 For those of you that are not part of the
3 Advisory Committee, I would ask that you hold your
4 comments. We will provide time for open comment period,
5 but our focus today is to get input and comment from the
6 Advisory Committee members.

7 --o0o--

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: Regarding ground rules, we ask that -- we do have
10 a court reporter here, so we would ask that one person
11 speak at a time and that there be no interruptions.

12 We're also looking for constructive dialogue.
13 We'd appreciate it if there was no criticisms. We're
14 asking everyone to listen respectfully and sincerely. We
15 will record all comments and suggestions from the Advisory
16 Committee. And of course, questions may be asked to
17 clarify ideas.

18 MR. LARSON: George Larson.

19 Will the minutes be posted on the Board's website
20 for later review?

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: Yes. We will do that.

23 MR. LARSON: Thank you.

24 In reviewing why we're here today, we realized
25 after our experience with implementing the RPPC law there

1 is definitely a need to revisit the regulation
2 specifically to incorporate statutory changes and improve
3 the clarity and organization and also make certification
4 process improvements. So again this is a fresh look at
5 the regulations based on our past experience with their
6 implementation.

7 --o0o--

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: We have developed a set of guiding principles we'd
10 like to use during this process.

11 With regard to environmental benefits, we would
12 like to see regulatory changes that clearly support the
13 intent of the law that would result in increased use of
14 recycled plastics and products and packaging, contribute
15 to California diversion, and also help to increase the
16 recycling rate of plastics, and also improve the
17 recyclability of plastics that are entering the
18 marketplace.

19 --o0o--

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

21 LEAON: Continuing with guiding principles, we're also
22 looking at process improvements for the certification
23 itself. We want to provide for more efficient and
24 effective implementation of the law. We want to improve
25 the clarity of the law. We want to increase compliance

1 with the law and also ensure fair and equitable treatment
2 for the regulated community.

3 --o0o--

4 MR. SABOURIN: Will these slides be available?

5 MR. BERUMAN: They were e-mailed out this morning
6 to everyone in the group. So you have them in your e-mail
7 box.

8 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: If we
9 want to refer to them during the course of the day, we
10 have those up as posters on the wall.

11 MR. SABOURIN: Thank you.

12 --o0o--

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
14 LEAON: So as part of the morning session, what we'd like
15 to do is discuss some specific issues after we've had
16 chance to walk through the regulatory changes. And the
17 issues I want to talk about this morning are issues that I
18 think we might have a good chance of reaching some
19 consensus on, or they are issues that are outside the
20 scope of the rulemaking and are issues we might have to
21 make parking lot issues.

22 And the issues that we want to get to this
23 morning include penalty calculations and factors, source
24 reduction, postconsumer material definition, and
25 certification process changes, including notification and

1 container determinations.

2 --o0o--

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: Regarding the afternoon session, we do want to
5 actually do some brainstorming this afternoon using a
6 process called a force field analysis, which is a fancy
7 term for saying we want to look at driving factors or
8 restraining factors or essentially pros and cons for
9 making changes that we proposed to the regulations.

10 --o0o--

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: So with that, I think I'll go ahead and walk
13 through the regulatory changes.

14 --o0o--

15 MR. BERUMAN: There's copies of the proposed
16 regulation up here if anyone needs them in the room.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

18 LEAON: Before I proceed, are there any questions on the
19 process for today?

20 MR. LARSON: Yes. The afternoon session
21 according to the agenda -- this is George Larson. Are you
22 breaking out product manufacturer definition to a
23 discussion this afternoon? I didn't see that on your --

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: Yes. We will discuss that definition. This

1 afternoon, we want to spend time on the RPPC definition,
2 the product manufacturer definition, documentation
3 requirements for the new compliance options. Then we'll
4 have some time for open discussion and public comment.
5 And time allowing, we'll also provide time for open
6 discussion and public comment this morning as well.

7 MS. LIVINGSTON: Would you repeat the process for
8 the Advisory Committee versus the others?

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

10 LEAON: The intent of this meeting is for us to get
11 comments from the Advisory Committee meeting. So we would
12 like to use our time to get their feedback. But we also
13 will be providing time on the agenda for the people that
14 aren't on the Advisory Committee to ask questions and
15 provide comment. But we would ask that you hold your
16 comments until the open comment or open discussion time.

17 Okay. Let me start by summarizing the written
18 comments. We had some general comments made by more than
19 one person in the written comments. And these basically
20 fell into the following four groups. One, there was a
21 comment that the Board should continue the use of
22 compliance agreements. Two, we had a few comments on that
23 the process is very abbreviated and more time to devote to
24 this process would have been helpful. Also had some
25 comments on the need for the Board to do more education

1 and outreach to the regulated community. And also we had
2 comments regarding the need for the Board to do more to
3 support increased collection and markets for postconsumer
4 material.

5 Regarding the definitional changes that were
6 proposed, really, the comments fell largely into
7 maintaining the status quo with the definitions. For the
8 postconsumer material definition, the comments that we
9 received was not to make the changes that we proposed
10 there.

11 Product manufacturer, same thing, maintain the
12 status quo.

13 RPPC, there was some confusion about the options
14 that we had included in the draft regulations, and we'll
15 try to clarify that today. But based on that lack of
16 clarity, there wasn't support given for making any of
17 those proposed changes.

18 Source reduction seemed to be really all over the
19 place. No consensus about possible changes there. And I
20 think also some confusion over the difference between
21 statutory and regulatory requirements. Essentially, the
22 change that we proposed there is just to delete obsolete
23 statutory requirements.

24 Regarding the certification process, we did get
25 some comments on that as well. There was some concern

1 about product manufacturers being recertified too
2 frequently. Also some comments about a container
3 determination or appeal process that we included in the
4 draft regulations. Wanted to put some further specificity
5 around time lines and response times including response
6 times for the Board.

7 So that summarizes the comments. I won't go into
8 any more detail recommended changes. But I think that
9 gives you flavor for the comments we received. Any
10 comments or questions on that?

11 MR. POLLACK: This is Randy Pollack.

12 I think one of the major changes -- and I think
13 apologize not getting in extensive comment -- is the
14 changing of some definitions regarding the food and
15 cosmetic issue.

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

17 LEAON: Okay.

18 MR. POLLACK: Which is giving a lot of concern to
19 a lot of people, because it's viewed that -- and I
20 represent the cosmetic industry that the changes here are
21 conflicting with the statutory exemptions. And so that is
22 of concern.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

24 LEAON: Thank you, Randy. All right.

25 STAFF COUNSEL BRANCH: Can we ask him to explain

1 this a little further, Mike?

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: Randy, we have a request in the room for you to go
4 into that in a little more detail about where you think
5 the conflict arises with statute.

6 MR. POLLACK: Yes. I think when you look at the
7 regulations and the changes that you made, you sort of
8 crossed out the definition of cosmetic and food. And then
9 in the back part of revised regulations there is an issue
10 where you are now requesting additional information about
11 those companies who may have some of those items. And it
12 will take me a minute to find which page that is on. But
13 it's under the exempt for plastic packaging containers

14 MR. LARSON: Section 17944.

15 MR. POLLACK: Right. And is there a concern that
16 you are taking more authority and requesting information
17 that we believe is not required since the statute
18 explicitly exemption food and cosmetics from the Act.

19 STAFF COUNSEL BRANCH: Randy, this is Harllee. I
20 was actually the one who went through the definitions and
21 crossed some of that stuff out, mostly because as I recall
22 when I did this -- and this was a while back -- the
23 original definitions in the regulations had food,
24 cosmetics, infant formula. And it became a mystery to why
25 those were in the definitions when none of those terms to

1 my knowledge ever showed up in any of the rest of the
2 regs.

3 So there was no intent to get rid of any of these
4 exemptions or ask for more documentation. It was more
5 trying to cut out dead weight. But if I've missed
6 something, I definitely encourage you to bring that to my
7 attention.

8 MR. POLLACK: I appreciate that. And when you
9 look at -- and I'm just trying to find the exact section
10 where --

11 MR. MCANENY: Page 45 on the hard copy printout.

12 MR. POLLACK: Because what has changed is that
13 you are requiring specific information. I mean, is that
14 something that we will discuss today that maybe it's not
15 appropriate to equate then to the revised regulations?

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

17 LEAON: Yes. We can take your comments on that.

18 MR. POLLACK: Okay. Thank you.

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

20 LEAON: Okay. Well, I think I will go ahead and walk
21 through the changes. I'm just going to cover the major
22 substantive changes so we can have more time for
23 discussion.

24 Beginning with Section 17942 on page 1, we
25 deleted the section on the regulatory effect of question

1 and answer. So we changed the format, moved away from the
2 Q and A format to a standard regulatory format. And we
3 hope that will help to substantially improve the clarity
4 and understanding and readability of the regulations.

5 Section 179432, capable of multiple reclosure.
6 This is on page 2 at the top of the page. We deleted that
7 definition, because it's part of the definition of rigid
8 plastic packaging container.

9 MR. LARSON: Michael, what format would you like
10 for us to raise issues? You want to go through a section,
11 or you want to take questions as they occur?

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
13 LEAON: What I'd like to do is go ahead and walk through
14 all of the changes, and then we can deal with specific
15 issues.

16 MR. LARSON: Thank you.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
18 LEAON: Next section is 17943, Definition 5, product
19 manufacturer definition. The changes we made in this
20 definition are intended to get at who is causing the
21 product to be generated and offered for sale in
22 California.

23 We had taken some comment and feedback from the
24 Advisory Committee. And as I indicated earlier, the
25 feedback we've been getting is to keep the existing

1 definition. One of the challenges that we've had is
2 having clarity on who the product manufacturer is. Our
3 feeling is that this definition helps to make that clear
4 and also perhaps most importantly places responsibility on
5 the company that's offering products for sale in
6 California.

7 Continuing with the definitions, Definition 13 of
8 postconsumer material, which I'm looking for the page for
9 you. It is on page 7 in your hard copy. What we've done
10 here is deleted the language that essentially allowed for
11 counting of post-industrial material that the language
12 indicated would otherwise have been disposed of. We have
13 had some challenges on confirming whether the material
14 that's claimed as being able to be counted under that
15 language is in fact something that's normally disposed of.
16 We feel this definition, which is essentially the
17 statutory definition, is very clear and eliminates any
18 ambiguity and certainly will make the certification
19 process I think more straight forward by not having to try
20 to make a determination which is not always easy about
21 whether a material is normally disposed of.

22 Continuing with definitions, Definition Number
23 16, recycling rate, also on page 7 -- the change is on
24 page 8. We've added a provision for single resin specific
25 plastic packaging container. This definition was needed

1 to reflect the new compliance options under Senate Bill
2 743 and 1334.

3 The next definition is rigid plastic packaging
4 container. This is where we had a lot of confusion about
5 what we're trying to accomplish here. And we had included
6 three options. Example one removes the requirement that
7 the container be capable of multiple reclosure. This
8 would really open up the universe of containers, because
9 it would regulate containers that don't necessarily have a
10 lid. An example are nursery pots. So that greatly would
11 expand the number of regulated containers.

12 Option 2, we tried to come up with an approach
13 that would not open up the number of regulated containers
14 as wide as the first example. So we thought of including
15 language that would reflect a container that can be sealed
16 or reclosed once including during the manufacturing
17 process. This would also actually help to level the
18 playing field, because it would put heat sealed containers
19 and disposal containers, they would both be regulated
20 under this change. And example three is essentially the
21 status quo, no change to the current regulation.

22 Continuing with definition 17, we also revised
23 paragraph B which begins on the bottom of page 9. Under
24 this option, we make the labeled volume the volume that we
25 will use in determining whether a container is regulated

1 between the eight ounces and five gallon. If there's no
2 labeled volume, we would then use the volumetric
3 equivalent, but it eliminates the discretion that the
4 product manufacturer previously had to use either or. We
5 feel for the clarity and the ease of implementation simply
6 going with what the labeled volume is makes a lot of
7 sense.

8 Continuing with definitions, definition 18,
9 single resin type. Again, this was a definition added for
10 the new compliance options under 1743 and 1344.

11 And finally, definition 19, source reduction,
12 essentially these changes are just eliminating obsolete
13 language.

14 Moving on to Section 17944, A and B, A and B were
15 added to clarify that of a RPPC container cannot meet the
16 postconsumer material content requirement and remain in
17 compliance with applicable state and federal regulations
18 or technologically infeasible to meet that requirement,
19 then the container must meet one of the other compliance
20 options. And this is consistent with statutory
21 requirements, and we wanted to add this to the regulation
22 to make it clear that if it can't meet the postconsumer
23 content requirements because of those restrictions, it
24 still must comply through another option.

25 MR. SABOURIN: I'd like to ask a clarifying

1 question. On the source reduction, I couldn't -- doesn't
2 jump out at me. Once a package is source reduced, how
3 long is that exemption? For how long is that exemption in
4 effect?

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: Under the current regulations, it would be
7 permanently exempt as long as that container is being
8 used.

9 MR. SABOURIN: Thank you.

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: Continuing with Section 17944, we've added a
12 requirement for a 45 percent single resin type RPPC
13 recycling rate, and that again is related to the new
14 compliance options under 743 and 1344.

15 Moving on to Section 17944.1, these are the
16 ultimate container compliance methods. And these are the
17 compliance methods for using California postconsumer
18 material either directly by the product manufacturer or
19 through a third party contractual arrangement.

20 Section 17945.2, this adds a process --
21 subparagraph C, which is on page 17 of your hard copy.
22 This adds a process for identifying product manufacturers
23 to be included in the certification. It sets forth a
24 hierarchy for selecting product manufacturers to be
25 certified. Also formally puts in the regulation a policy

1 that we've been following in regard to providing at least
2 six months' advance notice for product manufacturers that
3 they're going to be included in the certification. And
4 also adds a new requirement that would require the Board
5 for newly identified product manufacturers that hadn't
6 previously been certified that they get at least the one
7 year notice and give the Board a chance to do education
8 and outreach with those with product manufacturers. They
9 get a one year notice before being included in a
10 certification cycle.

11 Section 17945(3) sub-paragraph (c)(3) --

12 MR. BERUMAN: Page 22.

13 MR. LARSON: 23.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: This has information either for source reduction
16 based on concentration of product. And that is on page 23
17 of your hard copy. Section 17945, (3)(d)(12) -- looking
18 for the page number. Okay. It's on page 27.

19 MS. LIVINGSTON: (d)(1) what?

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

21 LEAON: (d)(1)(2), adds information needed if compliance
22 is based on use of California postconsumer material. So
23 these are the documentation requirements for the new
24 compliance options for use of California postconsumer
25 material.

1 The next section is 17945.5(b)(2). This adds the
2 calculation of formula for compliance based on
3 concentrating the product or a combination of
4 concentrating the product and reducing the weight of the
5 container.

6 Next section would be 17948(2), container
7 determination, which is on page 50. This section adds the
8 steps that can be taken if it is unclear to a product
9 manufacturer if a container is a rigid plastic packaging
10 container. So this lays out an appeal process for
11 container determinations. So if there is a difference of
12 opinion between Board staff and the product manufacturer
13 over whether a particular container is regulated or not,
14 this spells out an appeal process to the Executive
15 Director and the timelines associated with that appeal
16 process.

17 Next section is 17949(b), which is page 51. This
18 section was added based on Senate Bill 743 and 1334, and
19 it's added to clarify a container manufacturer becomes
20 responsible or liable for any penalties that would have
21 accrued to a product manufacturer if that container
22 manufacturer provided false or misleading information that
23 that product manufacturer then relied upon in its
24 certification documentation. So again, the product
25 manufacturer penalties would pass along to the container

1 manufacturer if the container manufacturer provided false
2 or misleading information.

3 And finally 17949(d), which is on page 53, this
4 further specifies and clarifies the calculation the Board
5 will use to determine penalties when a product
6 manufacturer is not in compliance.

7 And lastly, on page 59, we did add some
8 clarification so factors can be used in modifying or
9 reducing penalties or violations.

10 Okay. So that's the brief synopsis of the
11 changes that we proposed. And what I would like to do now
12 is we have identified some of the issues that were
13 identified by the advisory group as being important to
14 them. And what we can do is take these one at a time, and
15 we don't have to go in any particular order. Do I hear a
16 preference from anyone?

17 Go ahead, George.

18 MR. LARSON: George Larson.

19 I guess I'm a little confused on process here,
20 because I don't -- as you just went through the whole
21 regulatory package highlighting changes is not consistent
22 with this outline, because this outline came out of the
23 results of the last Advisory Committee meeting. So I
24 don't know that I can flip pages fast enough to fit our
25 comments back into this format. I think I'd ask other's

1 input if it wouldn't be easier just to do what you just
2 did, except spend some time on the ones that we had
3 questions on.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
5 LEAON: Okay.

6 MR. LARSON: And we would hit every one of these
7 in that process.

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
9 LEAON: All right. Do I hear any objection to that or --

10 MR. BUSARD: Sounds like what you would end up
11 doing anyway.

12 MR. LARSON: It would end up at the same place.

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
14 LEAON: Okay. So what we can do is we can go through this
15 section by section. And perhaps what we should start with
16 is my suggestion would be product manufacturer, which is
17 Definition 5.

18 MR. LARSON: George Larson.

19 I would like to talk about capable and multiple
20 reclosure, but I think we can do that in the context of
21 the RPPC definition.

22 I had raised a question about clarity on what a
23 brand name is. I know what a brand name is, but how does
24 it in response -- Downey, or I don't know what that is. I
25 just think it needs a little bit more clarification,

1 unless I just don't understand it.

2 MR. MCANENY: This is Jack Mcaneny with Proctor
3 and Gamble.

4 Just in regards to the definition and the
5 proposed change, I clearly appreciate the intent of what
6 you guys were after. But I think the way the language
7 reads it might actually serve to introduce ambiguity into
8 these discussions. The existing definition has a very
9 clear mandatory hierarchy of this is what will follow. It
10 will follow the label. If whoever is listed as
11 manufacturer if that's not clear, it's distributor and
12 then importer, whereas this would introduce some question
13 into that. I think probably end up creating a lot of
14 questions. So in terms of being consistent with the
15 intent trying to improve clarity, I think that would be a
16 change actually in the opposite direction.

17 And the other thing I think that is relevant when
18 you think about comparable types of regulations, whether
19 it's the Oregon RPPC regs or the California VOC regs that
20 look at consumer products, they follow a similar type of
21 logic when trying to identify a responsible party for lack
22 of a better term in terms of relying on the label because
23 of the clarity that that offers.

24 MR. BUSARD: This is Tom Busard.

25 I have to agree. There is a couple of words in

1 there that I think serve to add, as Jack said, ambiguity
2 rather than clarity. And one of them is driving
3 production. I don't know exactly what that means. I know
4 what it means, but I don't know what it would mean in a
5 law, written into a law. And there's a couple of the
6 other comments. So I think the previous definition did
7 have a more defined hierarchy as far as this particular
8 paragraph. But I understand you're trying to make sure
9 that as the proliferation of other non-historical brands
10 you could say -- I don't know what the example would be
11 that you want to capture that and then there is a loophole
12 for stuff, like Dennis Sabourin's water, for instance. I
13 mean, if it's his water, does that mean because it's not a
14 major brand it doesn't have the same responsibility? I
15 guess that's the intent.

16 STAFF COUNSEL BRANCH: What we're trying to get
17 at -- this is Harllee Branch, Counsel at the Board.

18 And I was the person who took a crack at trying
19 to write something for this. And I guess what I was
20 trying to get at was I think the RPPC law is essentially a
21 producer responsibility law. And it puts the ultimate
22 responsibility on the head of the product manufacturer.
23 We had this existing hierarchy based on the label that in
24 all cases was not necessarily putting responsibility on
25 the right person. So what I was trying to write here was

1 something that had some give in it. So we would have the
2 ability and the discretion to get at the entity that was
3 ultimately responsible for generating product that ends up
4 in the RPPC. So I can -- it's kind of a balancing act,
5 because I see the need on the part of the product
6 manufacturers to have some clarity. But sometimes that
7 clarity sacrifices getting at the appropriate party.

8 MR. BUSARD: What would be an example of what
9 you're looking for there?

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
11 LEAON: Let's take a major -- this is Mike Leاون with the
12 Board -- a major chain store. They have their own store
13 brand name. And they're buying products from several
14 suppliers with their brand name label on it. And they're
15 the ones that are causing that product to be generated and
16 offered for sale in California.

17 Now, for supporting the intent of the law, and as
18 Harllee was indicating, regulating the company that's
19 causing the product to be offered for sale in California,
20 we feel that we should go after the company that has that
21 brand name rather than trying to regulate all those
22 individual suppliers and their supply chain who may have
23 no control over where that product is being sold.

24 MR. SABOURIN: This Dennis Sabourin from NAPCOR.

25 The term product manufacturers I think adds

1 ambiguity, because the product manufacturers, normally
2 that person who manufacturer the product and then sends it
3 to a distributor. I think to have it clearly the brand
4 owner or that person, if it's not a brand, who owns or
5 imports the material as a private brand should be the
6 entity responsible. It really fits the definition that
7 you mentioned, Michael. But product manufacturer is very
8 different at least in the business jargon.

9 STAFF COUNSEL BRANCH: Product manufacturer term
10 we got stuck with the Legislature put that in there.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
12 LEAON: A statutory definition.

13 MR. SABOURIN: Okay. And --

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: And unfortunately that's an issue that will be
16 outside the scope of this rulemaking.

17 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
18 Bill.

19 We need to define it for the purposes of this
20 law, and it captures the concepts that we're talking
21 about. So it may not be a commonly accepted business
22 definition what a product manufacturer is, but I think
23 we're onto something in this conversation. And so I think
24 for the purposes of this law we need to define it in a way
25 that makes sense. And if we have things -- you know, if

1 there are other commonly used terms that you do identify
2 with that do mean something to the stakeholders and we can
3 build that into the definition, then that I think would
4 help everybody.

5 STAFF COUNSEL BRANCH: Let me give an example of
6 something that happens under the status quo definition.
7 We have a hierarchy where we're identifying the so-called
8 manufacturer of a product. We'll get a large box store
9 company that has its own in-house brand name. And we've
10 seen examples of this now where they're having the folks
11 that manufacture the products for them putting
12 manufactured by this sort of intermediary company for
13 blah, blah, blah company. And really, it's the box
14 company that should be responsible for this RPPC. They're
15 the ones who through a contract or controlling this
16 company are making product in an RPPC end up in
17 California. But the big companies are putting the
18 responsibility on some intermediate company and which is
19 just compounding all of our troubles. So I'm trying to
20 find a solution to that.

21 MR. LARSON: If I may comment. George.

22 Something I guess that cannot be questioned is if
23 you pick up a container and it has a name on it, then
24 that's as much evidence I guess as you need to find out
25 that by naming it that is the product manufacturer. But

1 what will be required in certification for that
2 manufacturer whether it's something they actually produced
3 or whether it's a Kirkland brand at Costco is that when
4 that product is identified, the responsible product
5 manufacturer then has to retrace the steps about where
6 they came from. And they have to go back to the
7 distributor and identify that in order they can find out
8 who was the actual product manufacturer and where did that
9 container come from that is now being asked for
10 certification under the law. So it's a matter of tracking
11 it back.

12 And, you know, for big companies -- and I
13 shouldn't use the name of it -- big company box stores
14 that have a broad array of products they do not
15 manufacture, they only sell it with their name on it, are
16 sophisticated enough I believe to go back and find out
17 where the distributor is. And then the distributor can
18 find out who the actual product manufacturer was. Well,
19 that gets a little bit more complex. That's complex
20 enough. But when you get into international sales -- and
21 whether it's the appropriate place to bring it up or not,
22 I know we'll talk about it sometime today -- including now
23 internet sales, I don't know and I'm asking for clarity
24 from the Board as to how is that going to be traced, let's
25 just say back through the importer. And I don't know how

1 the regulated community who sells a product that was
2 imported from a foreign country can hold them responsible
3 for compliance of the law. And it doesn't seem equitable
4 and fair to stop it at the border if, you know, we can't
5 legislate in the state interstate commerce of products or
6 even international according to whatever agreements are
7 negotiated between countries. So it just gets real dicey.
8 I don't know that this clarifies that.

9 MR. BUSARD: Tom from Plastipak.

10 I'm trying to follow your example and your
11 definition clarification. In your example, wouldn't
12 Kirkland -- let's say Kirkland imports that product from
13 Ethiopia. Who cares? It doesn't matter. They have their
14 product name on it. And don't they maintain the -- under
15 the statute, don't they maintain the requirement, the
16 responsibility to make sure it meets the guidelines for
17 sale in California? Because I think if you just say, you
18 know, it's impossible to regulate it and it's going to be
19 more complex and things are going to come from everywhere
20 then I think you pretty much would have a free-for-all.

21 I don't know how you separate -- I mean, to me it
22 almost -- I don't want to say it doesn't matter where it
23 comes from. But I think the responsible party, in your
24 example Kirkland, regardless of where they would get it
25 from, they would be in my understanding of the regulation

1 would be the one that would be on the hook for does it or
2 does it not meet the regulations. If they have a hard
3 time following that trail, then you know I guess I don't
4 know how to answer that.

5 MR. LARSON: I think you're exactly correct. I'm
6 not saying -- that is how I believe the law has been
7 interpreted up to now. And there have been difficulties
8 that have been demonstrated to be able to go back and get
9 the information necessary. And if you can't provide the
10 information, I don't know what default you go to.

11 I'm only trying to define the problem. Some
12 companies are going to be more sophisticated in terms of
13 their business practices to be able to go back to
14 Ethiopia. Some of them are not, because it might have
15 come from Ethiopia through a distributor in Des Moines who
16 then ships it to San Francisco, who then ships it to
17 Raleys, and I don't know what to do. I don't know what to
18 tell people who ask me the question.

19 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
20 Bill Orr.

21 One of the things I think is important to keep in
22 mind throughout the conversation today is that while there
23 are specific issues on individual compliance options, one
24 of the things is that, especially for larger companies,
25 you've got sort of the corporate averaging options and you

1 also have the new compliance options. So, conceivably, a
2 company could say I can't track back this particular
3 product, so what I'm going to do instead is use one of the
4 new compliance options that we have for using California
5 material. And I'm going to either do it in another
6 product or packaging or I'm going to do it through a third
7 party. So I think some of -- I think we do need to do our
8 best job possible of addressing specific issues in each
9 compliance option. But, you know, sometimes based on the
10 specifics of whether you can incorporate material into a
11 specific product or package or maybe documentation
12 challenges you might need to pursue another option. So
13 just want to sort of keep that in mind as well that that
14 might be something that as we move forward will help
15 alleviate some of those challenges.

16 MR. SABOURIN: This is Dennis.

17 Just one point on that. I think it would make it
18 easy if we developed a stewardship hierarchy. And number
19 one of the stewardship hierarchy would be the brand name.
20 And number two not having an identified brand owner is
21 that entity who offers the product for sale. And then you
22 have a point of responsibility. And, Bill, I agree with
23 you, then you can go through the options. But unless you
24 assign a responsibility through a stewardship process, I
25 think you'll end up having unregulated entities.

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: This is Mike with the Waste Board.

3 Certainly, we understand, George, the

4 difficulties that some product manufacturers have on going

5 back through their supply chain, especially if it's a

6 product coming out of China. But we can't certify the

7 supplier in China. So for the purposes of this law, we

8 would have to certify the company that's importing that

9 product and we have had product manufacturers that have

10 been successful with working with their suppliers in China

11 to get the documentation. They actually translated the

12 form into Chinese and sent them to their supplier saying

13 they actually posted those forms in Chinese on the web

14 page. So I understand it can be extremely challenging,

15 but we have had a product manufacturer successfully do

16 that.

17 Are there any other comments or questions on the

18 product manufacturer definition? How about on the phone?

19 MR. YEDIDSION: Only comment. If you would

20 please, people in the back of the room, if they speak up

21 so we can hear them a little bit better, it would be nice.

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

23 LEAON: Randy, are you still on the phone? Randy Pollack?

24 Okay. I was going to suggest that we deal with Randy's

25 issue at this point, but we can deal with his concerns

1 outside the meeting.

2 MR. LARSON: Which is his concern?

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: The definition of deleting the definition for food

5 I believe and cosmetic. And I believe that's in relation

6 to the exemption documentation.

7 MR. LARSON: In I may -- George.

8 I have maybe a similar question is I'm not sure

9 what the outcome -- I think I know what the intent is.

10 And Harlllee, I appreciate your efforts for trying to get

11 rid of some this archaic stuff that comes from 1991. But

12 I'm not sure if by the deletions you made of definitions

13 and their requirement for a company who does not -- who

14 utilizes the exemption for food and cosmetics that in the

15 law if that requirement for that company to use some other

16 compliance option it does not have the net effect of

17 invalidating the exemptions that's in the statute?

18 STAFF COUNSEL BRANCH: No.

19 MR. LARSON: It's unclear.

20 STAFF COUNSEL BRANCH: There was a lot of

21 redundancy in here. I mean, you walk through these

22 definitions, let's look -- that one for food. Food means

23 those articles as defined in the Food, Drug, and Cosmetic

24 Act. It gives a reference. And then goes ahead and

25 repeats the definition that's in the Food, Drug, and

1 Cosmetic Act. And then you go to the I guess the piece of
2 the regulations that talks about the actual exemption.
3 And again in that -- if somebody can point me to that.

4 MR. MCANENY: This is page 45.

5 I think what you're saying, Harllee, it makes the
6 same statutory references in the exemption language so
7 those are duplicative.

8 STAFF COUNSEL BRANCH: If you want to know what
9 food, drugs, cosmetics mean, you can look them up in the
10 Food, Drug, and Cosmetic Act. It takes up a ton of extra
11 space repeating the same definition that's in other
12 statute.

13 MR. MCANENY: I don't want to speak for Randy,
14 but what I thought his question was focusing on was the
15 bottom of page -- if I'm jumping ahead in the process,
16 I'll hold this. But there was a change in the language
17 talking about what you need to do to receive an exemption.
18 And in the past, it had always had been once you receive a
19 certification request, you then can provide that
20 information to the Board.

21 I guess one of the questions I had is that
22 something that we would have to under this proposed
23 revised language provide in advance to the Board? Because
24 it goes from saying it's a response to a request. And it
25 just wasn't clear to me now if this is information that

1 product manufacturers would need to submit upon the
2 effective implementation of this to validate, yes, indeed
3 those are exempt and provide the requested information.

4 MR. SABOURIN: That's a good question.
5 Dennis.

6 Because do we want to in this process be
7 proactive or reactive. And being proactive, then you
8 could possibly take yourselves off the slate from being
9 chosen or you could put yourself in batting order to be
10 chosen, you know. So what is the intent of the Board? Is
11 it the intent of the Board would they rather be proactive
12 in things like this or act reactively?

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
14 LEAON: Well, we didn't spell that out in the revised
15 language. Let me ask Jan if she has --

16 MR. HOWARD: I think the reason this was put in
17 here is that was something that we were already requesting
18 on the current certification forms. And we included an
19 exempt data manufacturer, product manufacturer. And so
20 this we're just spelling out in here the information that
21 needs to be included on that form is all. And it's
22 already on the form. It's what we've already been doing.

23 MR. LARSON: If I could ask, the key term that's
24 stricken out is if requested by the Board. That doesn't
25 seem to be carried over into the new language. So I think

1 the question becomes then being am I supposed to send this
2 in when I start a new product on the line or --

3 STAFF COUNSEL BRANCH: I don't think that was the
4 intent.

5 MR. HOWARD: Yeah. By all means.

6 MR. LARSON: It's much clearer.

7 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
8 Bill.

9 One of the new steps we inserted in the
10 certification process that Mike highlighted was the sort
11 of the new product manufacturer identification step. But
12 again, that would be sort of at the request of the Board.
13 But basically that would provide another opportunity prior
14 to an actual certification. If you were identified as a
15 potential manufacturer, then you would get this notice.
16 And if you had exempt products at that time, you could say
17 well, you know, we don't do any RPPCs, so we shouldn't
18 really be identified as a product manufacturer. But that
19 still would be in response to a request. So just wanted
20 to highlight that, that that could be another place where
21 a manufacturer could opt to indicate that they have exempt
22 product lines.

23 MR. POLLACK: This is Randy Pollack.

24 I think the big issue here is that it appears to
25 be very expansive of what you're doing in laying out in

1 page 46 the description of the packaging containers, the
2 basis for the exemption, material safety data sheets.

3 Now, in the past, what we have done -- and
4 therefore I think the definition up front sort of defines
5 what a cosmetic is. And I think by taking that out, what
6 you're doing in this section is you're going to require
7 all these companies to provide all this additional
8 information in substitution for that definition that was
9 eliminated in the first section.

10 It's my understanding that when you read the
11 statutory -- the law, there is an exemption for cosmetics.
12 You may send out a certification to a company and their
13 response may be, we sell cosmetics. We sell this line of
14 cosmetics. Therefore, we are not covered under the law.
15 It seems you're vastly expanding the scope of information
16 these companies would have to provide.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
18 LEAON: I think -- this is Mike.

19 I think what we need to do, Randy, is further
20 clarify this. The documentation was not intended for
21 cosmetic. The documentation was intended to address the
22 RCRA and the hazardous materials. We have had examples
23 where the product manufacturer claims a container is
24 exempt, but it's on the basis of a chemical or compound
25 that's in the product. But it's at a concentration not

1 high enough to trigger registration. So it really
2 wouldn't qualify as an exemption under that basis. And we
3 found that this is the information we need, and it would
4 really expedite the process if a product manufacturer
5 supplied that information along with its claim.

6 MR. POLLACK: Randy Pollack.

7 And I understand that. So this is going more to
8 under Section 4 about the hazardous material.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

10 LEAON: Yeah. Three and four, the RCRA and the hazardous
11 materials.

12 MR. POLLACK: It may be it's something we could
13 just clarify.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

15 LEAON: Yes.

16 MR. MCANENY: This is Jack Mcaneny with Proctor
17 and Gamble.

18 Just so I'm clear in terms of overall intent. I
19 think I'm hearing folks say is for those products that may
20 be regulated as a food, drug, or cosmetic, the type of
21 exemption documentation you would be looking for is a
22 statement that says the following products are exempt
23 because under the whatever statutory reference is they're
24 regulated as food, drug, or cosmetics and have those
25 products then listed but for hazardous materials and RCRA

1 regulated there would be other documentation requests.

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: Yes.

4 MR. MCANENY: Thank you.

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: Any other questions or comments on this topic?

7 I would like to save the discussion -- well, I
8 guess we can do it now actually. We're getting into
9 material that I intended to cover this afternoon. Why
10 don't we tackle the source reduction definition and save
11 the RPPC definition for after lunch.

12 So the source reduction definition is on page 10
13 beginning with the strike-out language there. And what we
14 intended to do was delete the obsolete language and
15 include clarifying language on how an RPPC can qualify for
16 source reduction. So I guess I would open it up for any
17 questions or comments.

18 MR. LARSON: Mike, George Larson.

19 I made a comment as to the addition on page 11 of
20 the clarification of what material type means. Just that
21 when I read it, I'm not really sure I'm more clear
22 afterwards. And it's probably my inability to grasp it.
23 But is it not in statute or in regulation that compliance
24 cannot be achieved by just changing material type? That's
25 still in statute I believe. Correct me if I'm wrong. I'm

1 not sure how this material type for the purposes of --
2 does not refer to individual plastic resins. Where does
3 that come from and what does it mean?

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: Let me open up the statutory definition as well.
6 So the statutory definition -- perhaps I should go ahead
7 and read that. A source reduced container means either
8 the following: RPPC for which the manufacturer seeks
9 compliance after January 1, 1995, whose package weight per
10 unit or use of product is reduced by 10 percent as
11 compared to that packaging used for that product before
12 January 1, 1990, to 1994.

13 So we should have deleted -- yes, we've deleted
14 that since that's in the regulation since that's obsolete.
15 And then we further clarified in the regulation the
16 remaining approaches which is an RPPC for which the
17 manufacturer seeks compliance after January 1, 1995, who's
18 been reduced by 10 percent when compared to the packaging
19 used by the product manufacturer on January 1, 1995. The
20 packaging used for that product by the manufacturer -- the
21 packaging used in commerce that same year for similar
22 products.

23 And the statute goes on to define what a source
24 reduced container is not. And it talks about substituting
25 a different material type for a material that previously

1 constituted the principle material of that container,
2 increasing the container's weight. Packaging changes that
3 adversely effect the potential of the container to be
4 recycled.

5 All right. So in getting to the issue, changing
6 to a different resin type becomes problematic if that
7 resin type is not recyclable, for instance, PVC. They go
8 from PET to PVC. Changing the resin types in that example
9 would not count because you're going to material content
10 that's not recyclable. However, changing to a non-resin
11 material type that is recyclable, we would count that as
12 being source reduced.

13 MR. SABOURIN: Do you have a definition of
14 recyclable?

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
16 LEAON: That is a good question, Dennis. I do not believe
17 there is a definition of recyclable.

18 MR. YEDIDSION: Michael, why don't you possibly
19 use the same guidelines that you have which is the 45
20 percent guideline?

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
22 LEAON: Let's make note of that.

23 STAFF COUNSEL BRANCH: There's no definition of
24 recyclable, because the term recyclable doesn't appear in
25 the regulation.

1 MR. SABOURIN: There are two terms. One is under
2 practical conditions, meaning if conditions were ideal, if
3 it was collected, it could be recycled. Or the other is
4 actually being recycled. And I feel we should go for the
5 actually rather than the possible and actual.

6 MR. YEDIDSION: This is Parham Yedidsion.
7 Anything is recyclable.

8 MR. SABOURIN: That's what I'm trying to get at.

9 MR. YEDIDSION: There needs to be a threshold as
10 to what are the rates of recycling. I think in other
11 areas we address the 45 percent overall rate and maybe
12 that should also fly over here.

13 MR. POLLACK: This is Randy Pollack.

14 I think one of the issues is if you're trying to
15 establish a recycling stream and this is almost a
16 disincentive you can't do it because it may not be at a
17 certain threshold -- if you're trying to develop. And I
18 think that is an issue for some of our folks.

19 STAFF COUNSEL BRANCH: I'm not sure I understood
20 that. You broke up.

21 MR. POLLACK: The concern is that if you have a
22 company that would move from one resin type to another
23 because they will provide source reduction. However, it
24 might not be as recycling -- the recyclability that the
25 current container is using or resin it's using. It's

1 going into another area where you're trying to build that
2 recycling stream. And it's very difficult for them to
3 switch if you're saying, well, we can't allow you to do
4 that because it's going to be less recyclable from the
5 resin you're switching from.

6 MR. YEDIDSION: Nobody says don't switch.
7 They're saying don't use the switch to count as a source
8 reduced item. You have other options at your disposal.

9 MR. POLLACK: It may be difficult to have other
10 options at your disposal if you can't source reduce that
11 container any more, unless you move to another material.

12 STAFF COUNSEL BRANCH: I don't think there's an
13 issue about switching resin types and having it -- I don't
14 think there's an issue with it being recycled less. It's
15 whether or not it can be recycled, period.

16 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
17 Bill.

18 I think we talked about the PVC example. That
19 probably meets that. I think probably the questions might
20 come up in switching it is the polypropylene. I think
21 that's more likely the one that would be the focus on. So
22 I think we need to think about that a little bit more.
23 Because, clearly, polypropylene can be recycled. The
24 question is are we going to use the definition that's more
25 practical that some recycling rate or even, you know, like

1 more a definition of what percentage of recycling programs
2 actually collect that material or recycle it. So I think
3 we need to look at that one a little bit more.

4 MR. SABOURIN: Let me just -- I follow you
5 perfectly, Bill.

6 This is Dennis again.

7 You could choose available in more than
8 50 percent of the curbside recycling programs in the state
9 of California.

10 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
11 a commonly used definition.

12 MR. SABOURIN: I agree, yeah.

13 MR. POLLACK: And that's a perfect point. If
14 someone wants to go from PET to polypropylene, now at the
15 moment they're sort of stuck whether they can do that or
16 not because there's really not a definition whether it
17 would be allowed under the law if they were doing some
18 sort of source reduction.

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
20 LEAON: Okay. Thanks, Randy.

21 MR. YEDIDSION: Mike, this is Parham Yedidsion.

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
23 LEAON: Go ahead, Parham.

24 MR. YEDIDSION: What is the definition of a
25 product? I haven't seen any definition whatsoever for

1 product. And maybe I'm just missing it.

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: We don't define -- well, with the exception of
4 food, cosmetic, and beverage, we don't define --

5 MR. YEDIDSION: Are competing companies who have
6 products within the same marketplace example -- you can
7 talk detergents. Is one product equal to the same product
8 to the competing company's product? By the same token,
9 there are products within the same family of company that
10 differ from each other.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: Okay. Well, a container doesn't become regulated
13 until a product is put in it. But trying to define what a
14 product would be --

15 MR. YEDIDSION: For that matter, is a product
16 introduced in 1995 is the same as a product that is being
17 produced today?

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: The container is the issue with the source
20 reduction, regardless of what product you put in it.

21 MR. YEDIDSION: I think it is also products. We
22 are referring to it as the container and/or the product.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

24 LEAON: Because of the similar product.

25 MR. YEDIDSION: Right.

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: Right. You could have general classes of
3 products.

4 MR. YEDIDSION: You guys can look into that and
5 see if we can sort of define that.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

7 LEAON: Okay.

8 MR. MCANENY: This is Jack Mcaneny.

9 Just one point on the definition at the bottom of
10 page 11. I understand why you struck after January 1st,
11 1991. If you're going to strike that, I think you better
12 strike that whole line item, because the definition of
13 source reduction would preclude you from ever considering
14 something where the weight per unit or use of product went
15 up.

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

17 LEAON: Mike, where is this?

18 MR. MCANENY: Paragraph two at the bottom of page
19 11. I think the original intent of that was probably to
20 prevent folks from increasing the weight before the
21 effective date. So I understand why you're striking the
22 January 1st, '91, but I think you just get rid of the
23 whole thing.

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: This one. Okay.

1 STAFF COUNSEL BRANCH: Or make it clear what that
2 was supposed to refer to.

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: Okay.

5 MR. ALEXANDER: Hey, Mike. This is Steve
6 Alexander.

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

8 LEAON: Go ahead, Steve.

9 MR. ALEXANDER: A couple questions here, and
10 excuse me if they appear to be sophomoric. But we talk
11 about source reduction and switching from one material
12 type to another, I think I heard you say earlier on today
13 in terms of the longevity of a source reduction exemption,
14 once a product or package has achieved that exemption, it
15 is a lifetime exemption; is that correct?

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

17 LEAON: Well, yes. Once we've determined the product is a
18 source -- the container is a source reduced container as
19 long as that container is in use, it can comply through
20 the source reduction option.

21 MR. BERUMAN: For the same product.

22 MR. ALEXANDER: That is based on the base line of
23 appears to be a couple of options, if I'm correct. It
24 appears to be in the package's first year of introduction
25 or the manufacturer's first year in commerce in the state

1 of California. I think there's one of two others. Can
2 you clarify for me what you mean by say the product
3 manufacturer's first, year first in California, et cetera?
4 What kind of base line are we using with this?

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: Well, the options for documenting that container
7 is a source-reduced container. There's basically three
8 options: Packaging used for that product for at least
9 twelve consecutive months by the product manufacturer --

10 MR. ALEXANDER: Right. So my point is the base
11 line here is moveable. It's not based entirely on a
12 package of that type by maybe a different product
13 manufacturer or different brand company as of January
14 1995. It's that individual consumer product package.

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

16 LEAON: I think we'll need to look at these definitions
17 and see if we can tighten them up.

18 MR. ALEXANDER: Another issue that I have
19 relative to this whole subject, as you know we have
20 multiple levels of concern, is have you taken any look at
21 changing the percentage upon which a material has to
22 qualify? I think if you look at the technology of
23 packaging design today versus 1995 when this was initially
24 put together is ten percent the number that you really
25 want, or has there been enough technological advantages

1 that we may be looking for greater numbers in terms of
2 this is an option to opt out of compliance?

3 STAFF COUNSEL BRANCH: That's not going to be a
4 regulatory issues. It's going to be a statutory fix. So
5 we're not going to deal with that here.

6 I mean, just to be clear, the statute defines
7 source reduction as 10 percent. If we want to change
8 that, we have to go to the Legislature to fix it. So in
9 this room, we're not going to solve that particular issue.

10 MR. BUSARD: This is Tom from Plastipak. Has it
11 always been basically an infinite lifetime exemption?

12 STAFF COUNSEL BRANCH: It's a compliance option
13 just to be clear.

14 MR. BUSARD: But I mean, once you reduce the
15 weight by 10 percent then you don't --

16 STAFF COUNSEL BRANCH: You don't have to keep
17 reducing that.

18 MR. BUSARD: So once you've done that, that's
19 your compliance option forever?

20 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: For
21 that package.

22 MR. BERUMAN: For that package tied to the
23 product. You have to remember it's tied to the product.
24 It's not an empty container.

25 MR. SABOURIN: Is it that product for that

1 entity? Meaning, if I have a package -- let's say I'm a
2 container manufacturer and I say, I have this wonderful
3 package that I have source reduced, that I'm just -- it is
4 being used by P&G. And I go to Colgate, and I say to
5 Colgate, "I got this wonderful thing and it meets the
6 regulation." You can't do that really if that entity, for
7 that package.

8 MR. BUSARD: Their weight on their container for
9 their product is what it was before.

10 MR. ALEXANDER: Steve, that was the question I
11 had earlier.

12 MR. YEDIDSION: And this is Parham again.

13 That's why it becomes so much more important to
14 define what the package is and what that product is so
15 it's very specific as to which package and which product.
16 Concentrations might change within a product over time.
17 That doesn't mean it's the same product.

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
19 LEAON: Okay. Any other questions or comments on source
20 reduction?

21 MR. SABOURIN: Did you want to hit the
22 concentration source reduction at this time to clear that
23 up? Because that issue is similar. And I guess it fits
24 under the 10 percent reduction. If you change
25 concentration by 10 percent and now concentrations are

1 changing anywhere from one-third to two-thirds. But it's
2 still the 10 percent option. And that will give you a
3 pass for that particular package.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
5 LEAON: Yes.

6 MR. SABOURIN: The package will remain the same,
7 but the contents of the package by virtue of
8 concentration.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
10 LEAON: Yes.

11 MR. SABOURIN: And that's also a lifetime
12 exemption?

13 MR. BERUMAN: That's where you look at the weight
14 per unit or use.

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
16 LEAON: Compliance option.

17 MR. BERUMAN: Not exemption.

18 MR. YEDIDSION: I have a question for Harllee.
19 Actually, it's more an education thing. And if you can
20 speak up, I'd really appreciate it.

21 What is it that you are able to change and what
22 is it that you're not able to change within the statute?
23 I mean, there's certain language I think in the statute
24 that -- I completely understand and I think agree you're
25 saying 10 percent cannot be moved. Yet, some of the

1 language around it we're adding and deleting from or to.

2 How do you determine what can or can't be changed?

3 STAFF COUNSEL BRANCH: Can you hear me?

4 MR. YEDIDSION: Yeah.

5 STAFF COUNSEL BRANCH: I'm sitting in the back of
6 the room.

7 MR. YEDIDSION: Move up. You're talking a lot.

8 STAFF COUNSEL BRANCH: I'll stop talking then.

9 Just to paint sort of a broad picture from a
10 legal perspective, administrative agencies are free when
11 they're given rulemaking power to clarify what's in a
12 statute. And we're doing that right now talking about
13 what does source reduced container mean. What we can't do
14 is can't go in and change what's in the statute to
15 something different. So if the Legislature says source
16 reduction is 10 percent, we can't go in and say we don't
17 agree with that. It's going to be five percent. Does
18 that make sense to you?

19 MR. YEDIDSION: Yeah. But just I'm not proposing
20 anything, but I'm just trying to say how much leverage you
21 have you could define it as 10 percent from the original
22 container or 10 percent above the new container, which are
23 two different percentages. In other words, you have the
24 leverage to do something like that, in essence.

25 STAFF COUNSEL BRANCH: I'm not quite sure I

1 understand the example. But the statute already has some
2 measurement as base lines in the language you're talking
3 about. And I don't think we're so much at liberty to
4 change what those are in the statutory definition.

5 MR. YEDIDSION: You can just define it as how you
6 see it.

7 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Further
8 clarify or interpret.

9 STAFF COUNSEL BRANCH: Further interpret it or
10 clarify it, but we can't contradict it or be in conflict.

11 MR. YEDIDSION: Have some leverage on the
12 clarification. I guess that's what I'm asking.

13 STAFF COUNSEL BRANCH: From a general standpoint,
14 yes.

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
16 LEAON: We can make the statute more specific or clear,
17 but we can't add requirements that are not authorized
18 under the statutory language.

19 MR. BERUMAN: In the statute requirement, it
20 talks about reduced by 10 percent. It doesn't talk about
21 comparing to 10 percent above.

22 MR. YEDIDSION: That was a poor example. I was
23 just trying to see how much leverage there was. I wasn't
24 suggesting anything on that.

25 MR. BUSARD: On the concentration change -- this

1 is Tom from Plastipak.

2 Can we go through an example of exactly how that
3 applies? Dennis mentioned it. Some of the containers are
4 being -- the concentrations are going 30 percent or 60
5 percent more concentrated. So in that case, if there's a
6 container that is let's say 100 grams just to make the
7 example easy, and that 100 gram container now holds a more
8 concentrated liquid, if the container is still 100 grams
9 but it holds more concentrated liquid, how is that looked
10 at under the source reduction?

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
12 LEAON: You would look at the number of uses that you're
13 getting per container, and you to increase the use by 10
14 percent.

15 MR. BUSARD: Uses meaning loads or spurts of
16 stuff you need to do something with.

17 MR. YEDIDSION: How do you determine -- again, we
18 get into that definition. It would be nice to have a
19 definition as to what is the container. Because you refer
20 to an original container. Yet, the new container was
21 probably quite a bit different.

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
23 LEAON: I think these questions are addressed in
24 documentation requirements.

25 MR. BERUMAN: On page 23 it talks about

1 concentration.

2 MR. HOWARD: There's the formula we use and what
3 we need. It's all spelled out.

4 MR. BUSARD: Just to follow the example and be --
5 I think Steve used the word sophomoric I guess this
6 probably is. But let's just use the example of a Sunburst
7 100-ounce container that is sold in a big box chain, for
8 example. It's 100 ounces, and it used to have 30 loads.
9 Now it's 100 ounce and it has -- I'm going to misquote
10 here, so don't correct me. 45 or 60 loads, let's say.
11 That 100-ounce container if it's still 100 grams and if
12 it's the -- I'm changing my example here. Sorry. Two
13 parts to it. If it's the same container and it's 100
14 grams now and it holds more loads or provides a product
15 that does more loads as long as it's 10 percent more loads
16 of wash than it used to be, then it qualifies.

17 What if it's a new container, a brand-new
18 container, different package, different shape, different
19 look, same color, different color, how does that fit?
20 Because that's a whole different, I mean --

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
22 LEAON: You can use a combination if you look at the
23 definition or the documentation requirements on page 23.
24 You can use a combination. So the new container is
25 lighter than the old container. You can take credit for

1 that as well as the concentration that's been achieved.

2 MR. MCANENY: The 10 percent reduction is in
3 container weight per use. So that's the comparison.

4 MR. BUSARD: That's the calculation. What I was
5 trying to get at is a new container versus an old
6 container. At what point do you -- what delineates a new
7 package versus an old package?

8 MR. BERUMAN: A new package is if it entirely
9 replaces the original product. So you discontinued the
10 original one and now you only sell the concentrate one.
11 That's the new package.

12 MR. HOWARD: Even though if it still weighs 100
13 ounces, by using that new package, if you are
14 concentrating the product in it, you're still getting that
15 use per unit, use of product per unit. So you'd still be
16 able to count the source.

17 MR. BUSARD: As long as that goes up by 10
18 percent.

19 MR. BERUMAN: Because you entirely replaced the
20 old package.

21 MR. HOWARD: Now if you have the old package,
22 it's different -- because that old package is going to
23 have to meet some of the other -- yes.

24 MR. BUSARD: So that new package has to be on the
25 shelf for twelve months before you can apply for that

1 option or exemption?

2 MR. BERUMAN: You can't compare it to the
3 original package.

4 MR. BUSARD: So now you have this new package on
5 the shelf that is a new product because it's a
6 concentrated product. It's on the shelf. If I read this
7 correctly, it has to be out there for twelve months,
8 twelve months before it can apply for or take the -- Mike
9 doesn't like the word exemption. We all keep using it.
10 Compliance option. Compliance exemption.

11 MR. BERUMAN: Basically, the package has twelve
12 months to figure out what kind of compliance option you're
13 going to use for that one.

14 MR. BUSARD: During that time, it has to comply
15 or does it have to do anything? It just has to --

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
17 LEAON: I think you raise a nuance in the comparison for a
18 newly introduced container. When you compare it against
19 the previous packaging, you're comparing the container
20 weights. If you're complying through concentration, I
21 think we need to take a closer look at this. But it would
22 appear to me that you wouldn't have to wait the twelve
23 months, because you're complying through a concentration,
24 not through a direct comparison and reduction of container
25 weight from the old container to the new container. So I

1 think we'll have to look at your example and give that
2 some further consideration.

3 MR. O'GRADY: This Bill O'Grady, Talco Plastics.
4 Given the examples we just heard, wouldn't these
5 exemptions adversely affect the potential for the rigid
6 plastic packaging container to be recycled or made of
7 postconsumer material? And if that's the case, how does I
8 guess provision (b)(3) at the bottom of page 11 comes into
9 play and who makes that decision or determination?

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: Hang on. I'm still trying to capture some notes
12 here from top. Bare with me. Okay. Go ahead, Steve.
13 Can you say that again for me? I'm sorry.

14 MR. O'GRADY: This is Bill O'Grady again.

15 My concern or my question or comment is that
16 given the examples we just heard from a source reduction
17 standpoint and in relation to I guess it's (b)(3) at the
18 bottom of page 11, don't these examples adversely affect
19 the potential for rigid plastic packaging container to be
20 recycled or made from postconsumer material? And if
21 that's the case, who's going to make that determination as
22 to whether or not you can comply under that if it
23 adversely affects the recyclability of the container?

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: So is your concern on switching to a different

1 resin type?

2 MR. O'GRADY: No. If you don't do anything to
3 the package, for example, and you reduce the concentration
4 by two-thirds, let's say you now get 40 percent more loads
5 of wash done, which is certainly within the 10 percent
6 side, and that container is now exempt from postconsumer
7 content?

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: No. They're just complying through the source
10 reduction option.

11 MR. O'GRADY: They have an exemption for what?

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

13 LEAON: There is no exemption. It's one of the compliance
14 options.

15 MR. O'GRADY: All right.

16 MR. BUSARD: That's a play on words. I think
17 that's the same question I was asking.

18 MR. O'GRADY: Tom, I think I'm trying to follow
19 up with where you were going with that. But in all, I
20 think it's confusing that it sends a different message to
21 me but --

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

23 LEAON: What it means, Bill, is as long as that container
24 is on the market with that original product, that
25 container line is going to be compliant through the source

1 reduction option.

2 MR. MCANENY: The other significance -- this is
3 Jack Mcaneny -- is that then I believe also be able to
4 roll that into corporate averaging that provisions that
5 are also within the statute. That can then be used to
6 offset other containers, if that's correct.

7 MR. SABOURIN: I think, Bill -- Dennis again --
8 is concerned about I'm sure is point number two up here in
9 the rulemaking guidelines. That's increase the use of
10 recycled plastics in products. That's what we're coming
11 up against in these issues. Because what we're saying in
12 using Tom's example is you may have a package that is on
13 the market today that is good for 30 washings, and you
14 have another package that's three times larger good for
15 let's say 90 washings. You concentrate the package and
16 you're going to use the same package that's 30 washings
17 which now will enable you to do 90 washings. So it's the
18 same package that's on the shelf. But by virtue of it
19 using concentrate, that will qualify or whatever the term
20 we use.

21 MR. O'GRADY: Exempt.

22 MR. BUSARD: Compliance option. We're getting
23 hit every time we say exempt, Bill, with a large stick.

24 MR. SABOURIN: You see where I'm going?

25 MR. MCANENY: No.

1 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
2 Bill.

3 Just going to our guiding principles there,
4 source reduction is the top of the integrated waste
5 management hierarchy in California. So you know, we need
6 to look at the combination of guiding principles up there.
7 And clearly in source reduction situations, the properties
8 may not allow you to use the same level of recycled
9 content if you source reduce using this option as if you
10 didn't. But that's already contemplated by the compliance
11 options. So we need to look at the overall preponderance
12 of that. I don't think that provision that we were just
13 looking at is basically saying that you're discouraged
14 from light weighting a container because you may not be
15 able to use as much recycled plastic in it.

16 MR. SABOURIN: I agree with you, Bill. But just
17 so we know as you do that you frustrate two of the things
18 on our guiding principle. One is increase use of product
19 and the other is diversion. Because if you take away a
20 market initiative for the use of recycled materials,
21 you're not going to divert as much.

22 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: I think
23 the diversion would be on the number of containers that
24 are going into the landfills. So if you concentrate the
25 product the way you are, you are resulting in more

1 diversion.

2 MR. SABOURIN: Good point.

3 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: That's
4 the balance.

5 One other thing -- are we leaving source
6 reduction pretty quick?

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
8 LEAON: Yes.

9 MR. SABOURIN: We hope so.

10 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Before
11 we leave source reduction, I don't know if we have an
12 electronic parking lot or we're going to use the flip
13 charts for that. But we heard two things on the source
14 reduction that are really more on the statutory side of
15 things.

16 And so before we leave that, I thought we might
17 put those two things up there and remind stakeholders that
18 while we can't change those things in this room, if there
19 are changes that you're looking at that would make sense
20 in terms of 2007 and source reduction, you know, to let --
21 the Capitol is only a couple of blocks away, and that's
22 where that would happen. So two points that have come up
23 there. One is 10 percent still make sense. And the other
24 one is do you get to claim it forever. If we can just
25 capture those as parking lot things. And if people are so

1 inclined, that's where those things would be addressed.

2 So I want to make sure we don't lose those.

3 MR. MCANENY: One last comment. This is Jack.

4 As I was listening to the conversation, I think a
5 lot of the confusion is stemming around what is the base
6 line of comparison. And the more that you guys can take
7 away from this can seek to try to clarify this language I
8 think that would be very helpful.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

10 LEAON: This is Mike.

11 Just one follow up to Dennis and Bill's concerns
12 on recyclability and postconsumer material. Even if the
13 new container is introduced for a concentrated product,
14 one of the things that is prohibited is switching to a
15 different material type that affects the switching from
16 material that's less recyclable. I think we would look at
17 it from that standpoint. So if they're switching material
18 type, we need to take that into account as well because we
19 definitely want containers that can be captured for
20 recycling and get back into the recycled stream.

21 MR. BERUMAN: When you were asking about the
22 container, on page 42 it talks about the new containers
23 there under letter (b).

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: Where was that?

1 MR. BERUMAN: A waiver from compliance with this
2 section will be valid for twelve months immediately after
3 the date on which a newly introduced product or package is
4 first sold or offered for sale into California. If that
5 concentrate container is a new package, then it qualifies
6 under there.

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
8 LEAON: Okay. The other definition we need to cover this
9 morning is the definition of postconsumer material, which
10 is page 7, definition 13. And the change that we made
11 here was to strike language. And I'll just go ahead and
12 read the language that we removed.

13 Rigid plastic packaging containers holding
14 obsolete or unsold products and post-industrial scrap that
15 is commonly disposed and not commonly reused within an
16 original manufacturing process shall be considered
17 postconsumer material when used as a feedstock in
18 products. And internally generated scrap that has been
19 commonly disposed of may be considered postconsumer
20 material if it is later used in a process other than the
21 original manufacturing and fabrication process.

22 MR. YEDIDSION: Where are you reading this?

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: This is page 7, definition of postconsumer
25 material. We have deleted that language and are going

1 with the statutory language, which is postconsumer
2 material means a material that would otherwise be destined
3 for solid waste disposal having completed its intended end
4 use of product life cycle. Postconsumer material does not
5 include materials and byproducts generated from and
6 commonly reused within original manufacturing fabrication
7 process. So we feel this change is consistent with the
8 statute and also other regulatory programs that use the
9 definition of postconsumer material.

10 And I was explaining earlier in some of the
11 certifications, we did have some real questions about
12 whether the internally generated scrap was in fact
13 something that would have been normally disposed of and
14 verifying that has definitely been a challenge in
15 conducting the certifications. So with that --

16 MR. LARSON: This is George.

17 I would offer that I appreciate the legitimate
18 difficulties that you cite in validating those claims.
19 However, I, at least for the Illinois Tool Works client I
20 represent, know that there is specific action taken to
21 capture this kind of material that would have otherwise
22 been disposed for the specific purpose of directing it
23 towards container manufacturer that would enable a product
24 manufacturer to comply with this law. If that option is
25 removed, it's my concern that now that will be disposed.

1 And I believe it will have the impact of increasing the
2 disposal of this type of material.

3 Under the second provision that you strike -- and
4 maybe someone would comment on this who's in the business.
5 But there are people who are brokers who go around to
6 companies and collect these materials for the specific
7 purpose of providing them to other users who would want to
8 comply with this law. And I think that removes that
9 valuable option. So I think this is a mistake.

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: Okay.

12 MR. YEDIDSION: This is Parham Yedidsion.

13 Just a clarification. We have a couple of
14 different operations, as I think Bill O'Grady's Talco
15 Plastics does well. We have the postconsumer division,
16 and we also have a post-industrial material division.
17 I've seen in the marketplace that a manufacturer scrap
18 that has any kind of value whatsoever or not even any
19 value to be disposed of in a landfill. There are enough
20 buyers out there for any and all types of materials out
21 there, including China. And when we buy material from the
22 post-industrial stream, we process it and market it as a
23 post-industrial product that does not comply with
24 postconsumer regulations. And there are plenty of buyers
25 for it.

1 MR. LARSON: Well, if things are that good, we
2 should all go home.

3 MR. YEDIDSION: For the post-industrial, we do
4 not have an issue with it. It's a lower end application.

5 MR. MCANENY: This is Jack Mcaneny.

6 One comment I'll throw on the table is with the
7 new section that looks at the alternate compliance options
8 giving credit for use of postconsumer material potentially
9 in non-regulated containers under this regulation that may
10 provide even greater incentive for folks that for
11 applications of postconsumer materials. So by leaving
12 that definition and broadening it, it may actually
13 stimulate greater demands because now these alternate
14 compliance options are available for folks. So that's
15 something to consider in terms of the diversion goal.

16 MR. SABOURIN: Dennis, if I may weigh in on this.
17 I'm taking the opposite view. The new definition I feel
18 is more descriptive of what we're trying to do. And that
19 is promote postconsumer recycling, promote curbside
20 recycling, and other optional collection. It is so easy
21 going back to my experience with a recycler for more than
22 40 years. It's easy to -- I'll use the word cheat and use
23 materials that are post-industrial and call it
24 postconsumer. That has happened in the past. And most
25 this definition of postconsumer material is one that's

1 been used widely. So it eliminates the use of all speck
2 materials and post-industrial materials. I agree with
3 there are plenty of homes for that.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: Any other questions or comments on this
6 definition?

7 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
8 Bill.

9 Just from a presentation standpoint, it might
10 make sense to capture points that were made on this one in
11 terms of that force field diagram. So while I don't think
12 we need to do that here, I think staff can convert that
13 after the meeting so we can sort of look at the issues on
14 both sides of that.

15 I think this is one that we're going to --
16 basically, what we're looking to do here is to capture
17 everyone's input. And then we'll be summarizing this to
18 Rosalie's Committee this fall when we take it forward to
19 get direction on the rulemaking. And we're going to need
20 to make sure that we capture these options and present
21 that information to the Board. And I think we've had a
22 good discussion here, and I think that will help
23 facilitate that decision.

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: Any other questions or comments on this definition

1 of postconsumer material? All right. Well, let's move
2 along. We'll discuss the RPPC definition this afternoon.

3 MR. BERUMAN: Should we take a break?

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: That's an excellent suggestion. It's been
6 suggested in the room that we take a break. So why don't
7 we do that. It's five until 11:00. Let's reconvene at
8 ten after 11:00. Ten minutes. Five after.

9 (Thereupon a recess was taken.)

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: For those of you that are on the phone, if you
12 can, don't mind, go ahead and give us your name again so
13 we can confirm who we have participating.

14 MR. O'GRADY: Bill O'Grady, Talco Plastics.

15 MR. SHESTEK: Tim Shestek.

16 MR. ALEXANDER: Steve Alexander.

17 MR. YEDIDSION: Parham Yedidsion, Envision
18 Plastics.

19 MS. ZETTLEMOYER: Amy Zettlemoyer, Wal-Mart, Inc.

20 MS. MARTUSI: Paula Martusi, Wal-Mart, Inc.

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: Welcome.

23 Okay. Well let's go ahead and resume. What I
24 would like to do before we break for lunch is get through
25 discussion on container requirements and also the new

1 certification processes that we've included.

2 But before we do that, are there any other
3 definitions or questions on the definitions that we've
4 already discussed before we proceed to container
5 requirements?

6 MR. LARSON: George Larson.

7 Just a point of clarification, under the new on
8 page 8 the single resin provision under sub-section (c)
9 which incorporates the product associated and -- what's
10 the other one? Yeah, particular type. And it also
11 incorporates the recycling rate of 45 percent. That 45
12 percent for a single resin type container will -- this is
13 written specifically to that section of the law; is that
14 correct? I mean, it's one compliance option if you
15 recycle a single resin type container by 45 percent or
16 more, then you can qualify --

17 MR. HOWARD: It's under the recycling rate. And
18 that recycling rate that option is the 45 percent
19 particular type. Now it is the 45 percent resin specific
20 rigid plastic packaging container and the product
21 associated.

22 MR. LARSON: Thank you.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: Thank you, Jan.

25 Okay. Let's proceed to Section 17944 on page 13,

1 which is the container requirements. Under the law,
2 product manufacturers can comply through the 25 percent
3 postconsumer material content, the source reduction
4 option, also the 45 percent recycling rate, which we were
5 just discussing, or be a reusable and refillable
6 container. And I'll save that one for just a minute.

7 So the changes we've made here under the 25
8 percent postconsumer material option, we've added
9 clarifying language again based on the exemptions on the
10 postconsumer material content. The statute does require
11 that those containers comply through another option if
12 they can't meet that requirement. So we've added this
13 language to make that clear.

14 In addition, on the reuse and refillable, we've
15 added clarifying language to make it more clear to the
16 regulated industry that the reuse and refillable options
17 refers to the original product held by that container and
18 that the product manufacturer either has to offer a refill
19 product or the manufacturer actually has to take the
20 container back and refill it directly.

21 So let's start with these changes and open it up
22 for discussion.

23 MR. POLLACK: Randy Pollack.

24 I think one of the concerns on the container
25 requirements is that technologically infeasible. One of

1 the issues we're going to have is if someone introduces a
2 new container that is source reduced at the lowest weight
3 possible and they can't prove that because in the law
4 right now they can't use that for anything and they don't
5 have any 25 percent PCR, there's nothing they can do.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
7 LEAON: For that particular container.

8 MR. POLLACK: And I guess the question is is
9 there some way of looking at this issue to try to short
10 circuit it before it gets to an administrative law judge
11 before you go through the process. I'm not sure how to
12 resolve that. But I think that's one issue some companies
13 may face.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: It definitely would be a problem if that product
16 manufacturer only has a few regulated product lines and
17 they're all impacted by this requirement. If the product
18 manufacturer has a large number of product lines, the way
19 to I think address it would be through the corporate
20 averaging, and hopefully compliance in the other product
21 lines would make up for whatever they couldn't achieve
22 either in postconsumer material content or source
23 reduction through this option. And I recognize that it's
24 definitely an issue. But I think we're bound by the
25 statute in this case.

1 MR. POLLACK: Was anything brought up -- I was
2 walking over. I was listening to part of it. Source
3 reduction, was that issue brought up as to newly
4 introduced packaging how we can demonstrate that it has
5 been light weighted? Because I mean, the concern is with
6 most of us know is that you're going to introduce a
7 container probably at the lightest weight possible. If
8 it's a new container, how do you demonstrate that? I
9 don't know if that's your parking lot issue or for this
10 afternoon. But I think that's one issue that I think
11 needs to be in the mix as we go through this thing.

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

13 LEAON: Maybe you can capture that.

14 I think the issue there it would have to comply
15 through comparison the similar products that are already
16 in the marketplace and the containers that those products
17 are using. That would be the only way to do it. There
18 would be the waiver requirement, however, if it's newly
19 introduced.

20 MR. POLLACK: I'm saying after a year. When you
21 look at different containers, I think the one difficulty
22 is there's so many different containers out there. What
23 is a like container, which I don't think the Board or
24 staff has ever really looked at it.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: I think that's an issue we need to capture on the
2 source reduction, what are similar containers. How many
3 you need to compare it to. We don't spell that out in the
4 regulation.

5 MR. POLLACK: Thank you.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

7 LEAON: So on the container requirements on your point
8 there, Randy, I think the challenge there I think that
9 becomes a statutory issue.

10 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Why
11 don't we capture this for the parking lot? I think there
12 is a statutory element to it. But what I'm hearing from
13 Randy is that he's also talking about a process component,
14 which is in recognition of that statutory limitation is
15 there anything we can do to the process that would
16 highlight or resolve those issues earlier on somehow? So
17 I think we need to look at do we have any options in terms
18 of the process, not in terms of the requirements.

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

20 LEAON: Okay.

21 MR. LARSON: Another point of clarification.
22 George. We lost our lawyer, but --

23 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: We got
24 another one.

25 MR. LARSON: I'm sorry. You're blocking her,

1 Mike. I didn't see.

2 Just a point of clarification on the container
3 requirement, Section 1(b), which deals with the
4 technological feasibility. I'm curious or need
5 clarification on how that language relates to the Public
6 Resources Code Section 42330, which has the provisions for
7 waivers for various reasons if the Board determines that
8 they're valid. And number two is this technologically
9 infeasible to use containers. What does this do to
10 statute?

11 MR. HOWARD: It still says if it's that, they
12 still have to comply under another compliance option.
13 That's why. Both of those are under there. And so if
14 it's either of those, like under the waivers or the
15 exemption -- this is from the waiver. A is basically an
16 exemption one. No, it's not. But B is the waiver. And
17 they're saying if you -- even though you may apply for
18 that waiver or whatever, it's technologically infeasible,
19 you still have to apply under another compliance option.

20 MR. LARSON: Is that new?

21 MR. HOWARD: No. It's always been in statute.
22 It's always been in statute.

23 MR. LARSON: How would a waiver --

24 MR. BERUMAN: It's a waiver from the postconsumer
25 material.

1 MR. HOWARD: It's a waiver from the postconsumer.

2 It's only a waiver from the postconsumer.

3 MR. MCANENY: Which is what I think the intent of
4 the additional language was to help clarify that.

5 MR. LARSON: Okay.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
7 LEAON: Okay. Any comments on the reuse refill language
8 under (a)(3) 17944 bottom of page 13?

9 Also we added the all single resin type rigid
10 plastic packaging containers, 45 percent recycling rate,
11 under the new compliance option. I think that's pretty
12 straight forward.

13 Moving on to section 17944.1 on page 15. These
14 are the alternative container compliance methods. These
15 are the compliance options that were newly added where the
16 product manufacturer either through direct action uses an
17 equivalent amount of California PCM in other products or
18 packaging to make up either in whole or in part the amount
19 of PCM it would need to use in its regulated product lines
20 or achieves the same result through third party
21 contractual agreement. I think this is pretty close to
22 the statutory language. Any comments or feedback on these
23 changes?

24 MR. BUSARD: This is Tom from Plastipak.

25 Is this saying the material used has to come from

1 California?

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: Yes.

4 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: That's
5 statutory.

6 MR. HOWARD: That's statute.

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

8 LEAON: California PCM.

9 MR. LARSON: It's intended to stimulate the
10 markets for recovery of plastics in California.

11 MR. MCANENY: This is Jack Mcaneny.

12 I have a question really. And it's in paragraph
13 (a). And I'm going to apologize in advance for diving
14 into the super level of detail here. But it talks about
15 using California sourced postconsumer material, which I
16 understand. But then using it in rigid plastic packaging
17 containers subject to the requirements of this section or
18 non-regulated containers.

19 So I guess that's just a little bit confusing to
20 me, because if I'm using postconsumer in a regulated
21 container regardless of where it's from, it's going to be
22 rolled under my PCR compliance option. Is this suggesting
23 that if I have a source reduced container that also
24 contains California sourced PCM, can I claim compliance
25 for source reduction and then also use the credit for the

1 California sourced PCM to apply to other regulated
2 containers?

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: Yes. I think you can do that under this
5 regulatory language. Because you'd be taking the source
6 reduction credit and averaging that across all the
7 container lines.

8 MR. MCANENY: That's my compliance option for
9 this container.

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: Yes. But any California PCM you put into that
12 container you can credit that to any deficit you would
13 need to comply under the postconsumer material content
14 using corporate average.

15 MR. MCANENY: Would that also apply if I have a
16 container that contains California sourced PCM and I use
17 that under my PCR content compliance option, do I also get
18 credit for that because it's California sourced PCM to
19 apply someplace else?

20 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: It's
21 excess compliance.

22 MR. MCANENY: If I'm above 25.

23 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: If
24 you're not counting it towards yours, you can enter into a
25 contractual relationship with another party so they can

1 conceivably count it if it meets the requirements, which
2 it would have to be used in the same year and those kinds
3 of things. So there's some logistical issues with that,
4 but yes.

5 MR. BUSARD: Trade credit type of thing.

6 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: We
7 won't quite go there.

8 MR. BUSARD: But -- all right.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
10 LEAON: Okay.

11 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: That's
12 item (b) though.

13 MR. MCANENY: I guess what I was just trying to
14 seek clarification on was because this paragraph (a)
15 refers to regulated containers and the use of California
16 sourced PCM within a regulated container, I understand the
17 point that you made. I guess what I was seeking
18 clarification on is you're not intending to give double
19 credit for the use of California sourced PCM?

20 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: No.

21 MR. MCANENY: I just want to clarify that.

22 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
23 Bill.

24 One other thing on that. Some of the language in
25 there, there were actually two different bills. There was

1 one year and then one year that sort of did some clean up
2 on that. Some of the terms there just simply I think
3 reflect sort of that process. And so I'm not sure beyond
4 that how much intent there is. It's just sort of that
5 incremental change.

6 MR. MCANENY: That helps.

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

8 LEAON: Okay. Any other questions?

9 MR. SABOURIN: Let's say that I am a brand owner
10 and I'm manufacturing a product in Iowa made from Iowa
11 virgin and PCR and selling product in California, am I not
12 in compliance?

13 MR. HOWARD: Not if it's under this.

14 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Did you
15 say you didn't address so --

16 MR. SABOURIN: It has 25 percent recycling
17 content.

18 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Yes.
19 You are in compliance.

20 MR. LARSON: You're under another compliance
21 option.

22 MR. SABOURIN: Thank you.

23 CHAIRPERSON BROWN: Any other questions or
24 comments on this particular section?

25 MR. LARSON: This is George. I just want to

1 raise on 17945.2 on page 16 the issue again on Internet
2 sales again. I won't say any more.

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: Okay. Well, let's clarify that, George. Because
5 from our perspective, I think all we're saying is that the
6 products offered for sale over the Internet and you buy it
7 in California, that means the products offered for sale in
8 California. So the product manufacturer then has a
9 responsibility for making sure that their regulated
10 container lines are compliant. That's all we're saying
11 here.

12 If it were as simple as all those products being
13 produced and manufactured in California and then purchased
14 on the Internet by a California entity, then it's a little
15 bit simpler. I'm alluding to the same expansion of the
16 regulatory and enforcement difficulties that are posed by
17 international sales that increasingly Internet sales are
18 including international purchases. So I just don't know
19 how you --

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

21 LEAON: The issue is how would we certify a foreign
22 manufacturer that's selling products over the Internet
23 into California.

24 MR. LARSON: Exactly.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: That would definitely be an issue. I agree. I
2 don't think we can send certifications to an overseas
3 manufacturer. We don't have the authority to do that. So
4 in that particular example, it's definitely an issue.

5 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Maybe
6 we should capture that for the parking lot.

7 MR. YEDIDSION: This is Parham Yedidsion.

8 How does the State currently deal with enforcing
9 sales tax on products like that that are being sold into
10 California?

11 MR. LARSON: Our tax lawyer is not here.

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

13 LEAON: I don't have an answer for that.

14 MR. YEDIDSION: There should be a vehicle where
15 they hold parties responsible for the sales tax. I'm just
16 wondering if you can piggyback off the same thing.

17 MR. LARSON: Well, under another section, it
18 actually sites the Administrative Procedures Act that
19 states the four requirements of regulations that they be
20 clear, necessary, legally valid, and available to the
21 public. I'm just questioning the legal validity of being
22 able to do this in the regulations and maybe the
23 necessity. I don't know.

24 One more if you will. I'm sorry. George again.
25 This whole section I think appropriately is more directed

1 to product manufacturers. But given the fact the
2 container manufacturers have equivalent responsibility to
3 comply with the law, for example, under subsection (a)(1),
4 the Board will include certification forms when it
5 notifies product manufacturers -- I don't know that it's
6 appropriate, but somewhere along the line here container
7 manufacturers are being brought to the same standard. If
8 it doesn't fit here, perhaps it is covered in that one
9 section on the back that deals with equity and penalties
10 for submittal of false information.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: You want to site their liability here?

13 MR. LARSON: I just -- yeah. They ought to be
14 duly informed of their responsibility under the law as has
15 been changed by recent legislation the same as product
16 manufacturers. And you know, maybe it's something for the
17 parking lot. But if I don't know the exact number, it's
18 in the tens of thousands of product manufacturers. And
19 probably the container manufacturers comprise a much
20 smaller universe. And I guess I'm suggesting it might be
21 a lot easier to deal with container manufacturers for
22 compliance than it is with product manufacturers who use
23 thousands and thousands of containers. But it's a parking
24 lot issue.

25 MR. BUSARD: George, this is Tom.

1 Are you talking about as far as notification, or
2 are you talking about the personally responsible for
3 compliance? I'm not clear on what you're suggesting.

4 MR. LARSON: The responsible party for compliance
5 with the law at least should be equal. I mean --

6 MR. BUSARD: I don't know how the container
7 manufacturer can be responsible for what the end brand
8 company product company putting it into the market does.

9 MR. LARSON: Well, the end product manufacturer
10 putting it into the market is using a container that the
11 product manufacturer must comply with this law which in
12 turn causes the product manufacturer to turn around to the
13 container manufacturer and say, make me a container that
14 meets these requirements. If they had to make a container
15 that met the requirements at the outset, then every
16 container purchased would be the product manufacturer
17 would have met --

18 MR. BUSARD: I'm trying to understand how that
19 process generally works.

20 MR. LARSON: I don't know.

21 MR. BUSARD: And does work. Because the world of
22 averaging --

23 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Let me
24 ask a question. Maybe that's where you're heading. That
25 may be true if you're going with the 25 percent

1 postconsumer end of the container. But if you're looking
2 at the source reduction options or the refill and reuse,
3 that all is product specific.

4 MR. LARSON: You're correct.

5 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: I think
6 generating compliant containers if you use PCM, that you
7 could. But I think the law that we're referring to,
8 that's really getting at making sure that they're giving
9 good information to the product manufacturer by which
10 they're certifying. And that if there's ways that we can
11 reinforce that that is really what we're getting after,
12 that they're really bound to give you accurate and correct
13 information about what's in those containers and the
14 weights of the containers and all of the things that
15 they're obligated as container manufacturers to provide,
16 if there's additional ways we can reinforce that, let us
17 know.

18 MR. LARSON: I retract my statement.

19 MR. BUSARD: Because in the form that I think you
20 were talking about, it was so broad if someone is going to
21 average across their product line and the container
22 manufacturer didn't put content into a container that
23 later on is deemed was needed in, it's impossible for that
24 container manufacturer to have been responsible for that
25 after the fact.

1 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Okay.

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: Well, continuing with this section on page 17,
4 paragraph (c), we added the certification processes that
5 we had been using for policy and put them into the
6 regulation to provide added clarity to the regulated
7 community on certification processes.

8 Sub-paragraph (1), we include the hierarchy used
9 in selecting product manufacturers to be certified. That
10 hierarchy would include product manufacturers that are out
11 of compliance with the law. That would be the first. The
12 second tier would be product manufacturers that had been
13 included in previous certification cycle, but had dropped
14 out typically for reasons of acquisitions or mergers. We
15 would put them back into the next cycle.

16 Newly identified product manufacturers, these
17 would be manufacturers that had not been previously
18 certified. And also product manufacturers that had
19 previously certified compliance. And finally, rounding
20 out a certification cycle with random selection from a
21 pool of manufacturers that they had built through
22 conducting past certifications. Paragraph C 2, this
23 requires us to provide at least six months advance notice
24 to a product manufacturer that would be included in the
25 certification cycle. For example, if the certification

1 forms were to be mailed out by say January 1, and the
2 proceeding calendar year we would provide notice to the
3 companies that are going to be in that cycle by July 1st
4 that they had been selected to demonstrate individual
5 certification or individual compliance to the Board. So
6 they would have at least six months advance notice and
7 they need to begin preparing for the certification.

8 And paragraph 3, this is something new actually.
9 And this gets into a little bit of the discussion that we
10 had previously and that doing certifications in a slightly
11 different way. What we would provide for here is that a
12 newly identified product manufacturer would not be put
13 into a certification cycle for at least a year after we've
14 notified it.

15 So going back to the example where we would
16 provide the manufacturer notice on July 1st. You're going
17 to get your certification packets on January 1 of the
18 following calendar year. We would back this out by
19 another year. So it would be from July 1 to July 1.
20 We've identified you as a new product manufacturer, and
21 you would have a minimum of one year before you would get
22 your six month notice. I don't know if I made that very
23 clear.

24 MR. LARSON: 18 months.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: As part of that initial notice that we send out
2 saying that you've been identified and you have at least a
3 year before you would be notified that you're being
4 included in the certification. That would give us an
5 opportunity to maybe identify and resolve some of these
6 issues up front with the product manufacturers whether
7 it's exemptions, whether it's waivers. So that's the
8 thought here. And also for us to do education and
9 outreach to those product manufacturers.

10 MR. POLLACK: Randy Pollack.

11 How do you identify what product manufacturer
12 would fall under this section? Because I know, for
13 example, you've already done say certification process or
14 send out notices to 1500 or 2,000 companies over the past
15 five years. Now if you have someone on the list that you
16 never sent the form to, are they under Section 3?

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

18 LEAON: That's a good question. And I think they should
19 be because while we may have identified them, we haven't
20 notified them of that fact.

21 MR. LARSON: So it's a notification that prompts
22 the calendar.

23 MR. SABOURIN: What is the purpose behind this?

24 MR. LARSON: Advance notice.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Provide advance notice to resolve issues in
2 advance pertaining to waivers and exemptions and hopefully
3 to give us a better opportunity to work with product
4 manufacturers on educating them before we put them into a
5 certification cycle.

6 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
7 Bill. If I can piggyback on that. The RPPC universe is
8 not a self-selecting universe. It's not like getting a
9 driver's license and everybody that drives a car has to
10 get a driver's license.

11 While ignorance of the law is not a defense,
12 there's a lot of people that continue to have never heard
13 of the RPPC law. So I think the idea here is that we need
14 to build an informed pool of manufacturers that are
15 subject to the law. And that could be through marketplace
16 surveys. That could be through Internet searches. That
17 could be through the various tools of who we believe makes
18 products contained in RPPCs. So it's helping to improve
19 our ability to bring people into the fold, but at the same
20 time to help streamline the actual certification process.
21 Because what we find is that we're having to deal with a
22 lot of issues. Not all of them are about containers.
23 They're also about corporate structures and things like
24 that with really short time frames.

25 So I think in addition to the education and

1 outreach, I think the other component of this is to make
2 sure are we certifying the right party? Are we in the
3 right place? Do we understand the corporate structure?
4 Do we have good contact information? All of those things
5 I think in the final analysis will help improve and
6 streamline the actual certification process. So that's
7 the other comments.

8 STAFF COUNSEL BRANCH: This is Harllee.

9 We've been running into this issue over and over
10 again where we send the certification package out to one
11 of 100 companies every certification cycle starting a
12 clock of usually three months to get all their information
13 into us and show compliance. And in so many cases the
14 first inquiry we get from the targeted certification is
15 what's an RPPC what? I've never heard of this law. So as
16 this clock for compliance is ticking away, they're
17 suddenly coming up to speed with what the hell this law
18 is.

19 You have to think of the universe of product
20 manufacturers in the United States who are technically
21 subject to this law is thousands upon thousands of
22 companies, and the outreach and education is extremely
23 difficult. We just thought this would be a good way to
24 get people in the fold before they're forced to comply
25 with the law.

1 MR. LARSON: It certainly is a dramatic
2 improvement. Because it used to be send the certification
3 out for two years back what a company did. Not to mention
4 ignorance of the law, the recordkeeping for two years back
5 may not be that. So this notifying in advance is a very
6 positive step forward. Having said that --

7 MR. SABOURIN: The law has been in effect since
8 1991. And I wonder if the department of taxation gives
9 the same consideration.

10 MR. LARSON: Our tax lawyer is not here.

11 MR. SABOURIN: Don't capture that last comment.

12 MR. LARSON: On subsection (1), I guess it may be
13 a perception, and convince me if it isn't, once you sort
14 of get in the cycle of having been selected for
15 compliance, it seems like you can never get out of it.
16 This seems to kind of go to that a little bit. And I have
17 specific reference to a client whose container was found
18 not to be able to comply and was fined. And it was
19 because they used polypropylene and they couldn't find
20 sufficient amount of polypropylene. And certainly we
21 would buy that polypropylene if Bill or Parham have it.
22 But what we did was stop selling the product in
23 California.

24 I can take you to the store right now, and there
25 are other products that were not selected that are selling

1 a similar product on the shelf who have not been selected
2 for certification. So there's a question of equity here.
3 So I don't know -- I think someone who is not in
4 compliance is certainly a target for keeping in the mix
5 until they come into compliance. But this sub-section
6 (d), for example, product manufacturers that have
7 previously certified compliance, why would they have to
8 certify it again if that certification was accepted?

9 And then finally the random selection thing is
10 the last priority, and I suggest it should be the first,
11 because it adds new blood if you will into the candidate
12 pool, rather than just, okay, we got you. And we are not
13 going to let you go.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: I don't think I have a specific response for you.
16 But we'll certainly take a look at the suggestions. I
17 think we'll give that some consideration.

18 Any questions or comments on the phone?

19 MR. ALEXANDER: This is Steve Alexander.

20 I think you know from my previous comments in my
21 years working for corporate America I think this is
22 extremely generous to the product manufacturers section
23 that you are offering. Clearly, Dennis summed up a lot of
24 my feelings. This law has been around for a long time.
25 And I just think that this is ignorance of the law, not an

1 excuse.

2 I guess the question I would have specifically is
3 when you give someone a Notice of Intent a year in advance
4 and they were not in compliance, then they introduce a
5 package or they introduce a source-reduced package
6 sometime within that 12-month period and then you do go
7 ahead and you audit them. So that product that was
8 introduced in the proceeding 12 months would in fact bring
9 them into compliance. So I'm taking this as your goal to
10 notify non-compliers 12 months in advance to bring them
11 into compliance before they face any potential penalties.

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
13 LEAON: Well, I don't know that a year's notice in many
14 cases will be sufficient for a product manufacturer if
15 they're out of compliance to come into compliance. But we
16 certainly want to start them on that road to coming into
17 compliance and to get them thinking about how they're
18 going to achieve that. I think there could be a benefit
19 here for the PCM suppliers that we'll be identifying. We
20 can identify a lot more product manufacturers through this
21 notification requirement without having to certify them
22 and give them a heads up. Oh, we weren't aware of this
23 law. Now we have to think about how are we going to come
24 into compliance with it. So I think it could actually
25 help to promote the markets for PCM.

1 MR. POLLACK: This is Randy Pollack.

2 I just want to say hearing the response,
3 ignorance of the law is no excuse. But let's look at a
4 way this program has been implemented over the last ten
5 years. Those in the plastics industry know about this
6 law. But if you are selling -- if you are a retailer, for
7 example, you're in another state or if you're selling into
8 California, you have no idea about this law. Because
9 unfortunately -- and it's not just because of budgetary
10 reasons that this law has not really been explained to the
11 companies that are out there, especially the companies
12 that are receiving these notices. And I can tell you
13 there are major companies within California who didn't
14 even know about this law who are engaged with the Waste
15 Board on a variety of issues and didn't even know about
16 this law. And these people are pretty savvy and they
17 follow everything. But they were unaware of this.

18 So I think that is one of the issues we are
19 trying to get our hands around is how do we best explain
20 this law to companies out there to make sure they know
21 about it, so when the Board staff calls them, they're
22 ready to provide them with the information.

23 MR. YEDIDSION: Randy, this is Parham.

24 Everybody who's on this call today and present
25 over there obviously is looking to comply and has been

1 doing so, and they have the best intention at heart. The
2 issues that we face on the industry side has been the ones
3 that know about the law that they continually thumb their
4 noses at it. And there's nothing to be done about that.

5 Everybody in this room is not the people we're
6 talking about. What do we do with those people? How do
7 we deal with those people who have known about it, yet --
8 and they're getting approached regularly by companies who
9 would bring them into compliance by one or more options.
10 Yet, they just don't go after it. And they realize that
11 the Board has limited resources, and they realize that the
12 Board can't get to everybody, and that's the end of the
13 story.

14 MR. POLLACK: Parham, my response to that, Randy,
15 is that there are companies out there, you're right, who
16 are not ever going to comply with the law. They may be
17 located in other states and don't care about it. But I
18 think one of the issues there is what is an RPPC. And I
19 think you have lots of companies who are saying, "They're
20 saying I have RPPCs, but I don't believe I have them."
21 That is one of the issues we are going to be discussing
22 this afternoon is trying to figure out what exactly is
23 covered. Because it is very difficult to sit here and
24 figure out -- we can bring in all these different
25 containers. And I don't think any of us would agree what

1 is an RPPC, except whether it's a detergent bottle. I
2 think everybody would agree with that, or Pine-Sol.
3 Everybody would agree with that. But how about clam
4 shells that are using head sets, for example.

5 MR. YEDIDSION: I'm talking about people on the
6 detergent. I'm talking people competing with P&G and so
7 on. P&Gs are model citizens, frankly. They have too much
8 at stake on the public perception side.

9 You're talking about independent companies that
10 are making detergent bottles for the private label
11 industry, none of which -- well, I shouldn't say that. A
12 good portion of which is not complying, and they have
13 known about it for a long time.

14 MR. POLLACK: If they've known about it for a
15 long time and they've made no steps to try to correct it,
16 I have no problem with the Board enforcing action against
17 them.

18 MR. LARSON: Send their name to Harllee.

19 MR. YEDIDSION: We haven't done that. But all
20 kidding aside, we haven't done that. And frankly, it's
21 not something that we should be doing nor are we
22 encouraged to do by the Board.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: Okay.

25 MS. LIVINGSTON: Is there a shortage of

1 enforcement staff?

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: Well, the staff that are dedicated to the program

4 definitely limit the number of certifications that we can

5 do in any one cycle, yes. I don't know that I

6 characterize it as a shortage. But with the resources we

7 have available, we have to conduct the certifications in a

8 way where we have the prospect of completing that cycle in

9 a reasonable period of time. And that number is about

10 100.

11 MS. LIVINGSTON: So you have to let some people

12 out of jail. This was the analogy. How we deal with

13 budget problems.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

15 LEAON: Okay. What I would like to do at this point --

16 it's ten until noon, and I would like to provide some time

17 for open comments before we break for lunch. So I think

18 we'll stop with our review here, and let's open it up to

19 anyone that's not on the Advisory Committee that has any

20 questions or comments that they'd like to answer or pose.

21 No questions.

22 MR. RAUH: I have one comment just following up

23 this last discussion. If there is an opportunity during

24 your day's deliberation to spend a bit more time on how

25 the Board can be more effective with its compliance

1 resources would certainly like to hear it. Because we
2 obviously have been associated with this program quite a
3 while, talking about changing the regulations to make them
4 more effective for you and more effective for us. And
5 being effective in compliance is very important to me.
6 So, any suggestions that you can have on how to better
7 target and how to better utilize our resources, electronic
8 resources, the information sources that are available,
9 that would help us pinpoint those folks who are scoffing
10 at the law, we'd certainly like to hear them.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
12 LEAON: That's an excellent point. And I appreciate you
13 bringing that up. You can certainly send -- if you don't
14 want to say anything during the meeting, you can certainly
15 send your comments to Jerry Beruman or myself directly.

16 MR. BERUMAN: If they want to send them
17 anonymously they can sent them to RPPC e-mail address.

18 MR. RAUH: Any lift of names or --
19 (Laughter)

20 MR. LARSON: \$20 reward.

21 MR. SABOURIN: On the people you notify, you give
22 them six-month notification?

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: Yes.

25 MR. SABOURIN: Is this the 100 people you intend

1 to audit, or do you have a larger universe?

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: We usually include about 125 companies, because
4 typically some companies will drop out. We want to have
5 some that we can fill in if some companies do fall out.

6 MR. SABOURIN: Okay. I'll just drop that. I
7 don't want to get myself in trouble.

8 MR. ALEXANDER: I'm right there with you.

9 MR. SABOURIN: If you want to encourage
10 compliance, why not send it out to a thousand and choose
11 100 from that thousand?

12 MR. BUSARD: This is Tom.

13 I mean, we're a manufacturer. The last thing you
14 want to do is incent. people to do things tighter versus
15 loser. But I almost think that -- and somebody is going
16 to shot me I'm sure. Well, you're basically taking all
17 the responsibility on yourself. And it's unfortunate
18 because you're saying if I haven't notified you, you don't
19 have to comply. And once I do notify you, you've got a
20 year to kind of figure out what you're going to do and
21 then six months after.

22 It would just seem like as a manufacturer there
23 would be ways that this information is available as people
24 ship into California or produce in California. I mean, a
25 lot of it that's shipped into California is not produced

1 here. So I understand how that's difficult. But there's
2 got to be ways for people to know about the laws that are
3 in effect in states that they ship into, other than just
4 you happening to find out who the manufacturer is in
5 California. I mean, I think it's great that -- and Steve
6 said, well, it's very board and generous. But there has
7 to be a better way to notify people effectively of what's
8 required in the state that they're doing business.

9 STAFF COUNSEL BRANCH: We're all ears.

10 MR. BUSARD: I don't know what the answer is.

11 MR. SABOURIN: Just one more comment. I've only
12 been working on this issue for the last two-and-a-half,
13 almost three years. Before that, I was with a
14 manufacturer. And I've always found the Waste Board
15 members to be always accessible, Waste Board staff to be
16 always accessible, always answering questions. And if I
17 was a member of staff, I would be incensed that people
18 would dare to say that they didn't know about the law. I
19 would be incensed. Because they do all they can to be up
20 front, forward. And then what it appears is that people
21 are hiding behind this matter of ignorance. And I dare to
22 say the Waste Board is promoting it by allowing it to
23 happen.

24 MR. POLLACK: Randy Pollack.

25 I'll just respond to that, because I represent

1 some product manufacturers, is that I would tell you to go
2 out, talk to any of your customers, ask them about this
3 law. See how many actually know about it. Because you'll
4 find very little, if anything.

5 When you advertise in the Plastic News, you're
6 reading this information. If you're obtaining a few
7 branded products in your store, three or four of them, you
8 are not bound -- you're assuming that the person who is
9 providing you your product is in compliance with the law.
10 Because in their agreement they have a standard statement
11 that basically says you are to be in compliance with all
12 state laws. So that is the difficulty that we have. That
13 when you're at the lower end of the chain -- and having
14 gone through and worked with people who are caught up in
15 the law, I have to go back three or four levels in order
16 to find out what that container is. So you can see how
17 far removed these people are, especially when you're based
18 in other states and you may just be shipping some stuff
19 into California. So that's a difficulty that we have.

20 You have to remember that the staff of the Waste
21 Board within the Plastic Division, according to some of
22 their reports, they have about 2.5 positions. That's
23 according to some of their budgets. I know there's a
24 bigger unit here that assists like everybody. Here maybe
25 working in different things. But 2.3, or maybe more,

1 maybe up to five or whatever it is. I know there's a very
2 small number.

3 And initially when they sent out 1500
4 certification forms, it's very difficult just to follow up
5 to provide information to those 1500 companies. I mean,
6 just Harllee probably sitting on the phone with one person
7 could take three hours to explain all the nuances of this
8 law. First, what's covered under it. What's the time
9 frame. What is source reduction, because I had no idea
10 what that means to me, because I bought this from some
11 distributor. So that's the difficulty that we have.

12 And I can tell you from the largest retailers
13 down to the smallest ones, many of them are unaware about
14 this law, because they have very few name products of
15 their own. They may be selling Proctor and Gamble. They
16 may be selling all these other lines. For the items they
17 carry, there are very few in number. And that's the
18 difficulty they have.

19 MR. RAUH: Could I ask a separate question in
20 coming at this from a different point of view? Would a
21 label a seal or any other sort of product mark indication
22 that indicates the package meets these requirements have
23 any marketing benefit or any compliance benefit? Have you
24 thought about that or discussed that in the past?

25 MR. POLLACK: This is Randy.

1 No, we don't think it would be valuable for a
2 couple of reasons. One, you can have corporate averaging.
3 So you have some containers that have postconsumer resin,
4 others that don't, and you still may be compliant with the
5 law.

6 I think the other thing is for folks that then
7 you start trying to figure out what's coming into the
8 state. Because a lot of companies will sell to a
9 distributor to Arizona. They aren't sure where their
10 products ends up. That's the thing. You almost have to
11 do it for a whole large line of the items as opposed to
12 California specific.

13 MR. RAUH: I guess it might work at point of
14 purchase though if the retailers were interested in it
15 enough. But I still see your point of whether it applies
16 to each individual package or whether it applies to a
17 company, P&G or something like that.

18 MR. MCANENY: I appreciate all the comments that
19 you all have made. I mean, I respect that. But you know,
20 I think, depending on how the initial notification was
21 worded, it would serve as an incentive to get folks
22 moving. If it's along the lines of we have now identified
23 you as a company subject to this rule. And at any point,
24 twelve months from now, we could require you to certify
25 there are penalties and in the interim if you need

1 assistance coming into compliance here who can you talk
2 to. At least that's a wake up call for folks to say we
3 can't plead ignorance any more.

4 MS. LIVINSTON: Here is a posting on the website
5 because once they get a note, that is a gift.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
7 LEAON: And that type of notice that could go out to 1500.

8 MR. MCANENY: Doesn't put any obligation on staff
9 other than to respond to the questions that you hopefully
10 get.

11 MS. LIVINGSTON: If you have a good website to
12 refer them to now, you know, it doesn't take staff time
13 other than the create the material.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: I do think we have a pretty good web page.

16 STAFF COUNSEL BRANCH: And a big issue I think
17 we've had is trying to target the right individual in a
18 very large corporation. And I brought up the example I
19 think last meeting of sending a certification to Michael
20 Eisner and giving Michael Eisner six months' advance
21 notice to certify compliance and --

22 MR. SABOURIN: Who signs the letter?

23 STAFF COUNSEL BRANCH: That letter probably
24 eventually made its way to the right person. But could
25 have taken seven months for that to happen.

1 MR. ALEXANDER: This is Steve Alexander. You
2 know my comment on that. I don't buy that for one second.
3 I worked for a very large consumer product company with a
4 workforce of over 140,000 people globally based. If a
5 compliance notification came to the hand of the Chairman
6 of the Board, it was in the hands of the health, safety
7 and environment person the next day. I don't buy that it
8 takes a large corporation seven months to get a compliance
9 notification from the chairman's office to the appropriate
10 party. It is not factual in today's world.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
12 LEAON: Okay. Do we have any other comments? Questions?
13 Does anybody want to have lunch?

14 (Thereupon a lunch recess was taken)

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
16 LEAON: We're going to go ahead and get started. I'm sure
17 people will be filing in, and we've lost a few people. Do
18 we have anyone on the phone?

19 MR. ALEXANDER: Steve Alexander.

20 MR. O'GRADY: Bill O'Grady.

21 MS. SANDERS KOEPKE: Dawn Sanders Koepke, McHugh
22 and Associates.

23 MR. SHESTEK: Hey, Mike. Tim Shestek.

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
25 LEAON: Anyone else on the phone?

1 Okay. Well, I guess we should go around the room
2 so the folks on the phone know who's here.

3 This is Mike with the Waste Board.

4 MR. SABOURIN: Dennis Sabourin, NAPCOR.

5 MR. BUSARD: Tom Busard, Plastipak.

6 MS. LIVINGSTON: Carol Livingston, for SDA.

7 MR. MCANENY: Jack Mcaneny, Proctor and Gamble.

8 MR. LARSON: George Larson, American Chemistry
9 Council and ITW.

10 MR. POLLACK: And Randy Pollack representing
11 Office Depot and the Cosmetic and Fragrance Association.

12 MR. BERUMAN: Jerry Beruman with the California
13 Integrated Waste Management Board.

14 MS. SILVEIRA: Caroline Silveira with the Grocery
15 Manufacturers Association.

16 MR. HOWARD: Jan Howard with the Waste Board.

17 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Bill
18 Orr with the Waste Board.

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
20 LEAON: Okay. That's everybody in the room. Let's go
21 ahead and resume our meeting.

22 We had left off with a discussion on new
23 certification processes. And there's one aspect of that I
24 would like to go ahead and cover before we get into the
25 definition of RPPC, and that is the appeal procedures for

1 container determinations. And that is found on page 50
2 and 51 of your hard copy Section 17948.2, container
3 determinations.

4 In conducting the certifications, there have been
5 instances where there was disagreement between the product
6 manufacturer and staff over whether a particular container
7 was indeed a rigid plastic packaging container. So we had
8 requests from several product manufacturers that we
9 include some sort of an appeal process in the regulations.
10 And we've done that. And essentially what that entails is
11 a product manufacturer once it's gotten a determination
12 from staff about whether its container is regulated or not
13 can appeal that determination to the Executive Director.
14 And that appeal would have to be in writing. And once we
15 receive that appeal -- let me back up and make sure I'm
16 giving you the straight scoop on this.

17 Within 30 days of receipt of the Board staff's
18 decision, so at 30 days after product manufacturer gets
19 the decision from staff, the product manufacturer may
20 appeal that decision. A repeal after 30 calendar days
21 will not receive consideration. So there's the clock.
22 Once staff issues its determination, there's a 30-day
23 clock for the manufacturer to submit the appeal. And that
24 appeal would go to the Executive Director, and the
25 Executive Director will issue a written decision within 30

1 calendar days of that appeal. And it also spells out the
2 information to be included with a written appeal. And if
3 that information was not provided, the appeal won't be
4 considered.

5 So let's open this up to comments and questions.

6 MR. POLLACK: Randy Pollack.

7 Couple questions for you. Earlier in the revised
8 regulations you took out what is flexible, what's
9 inflexible. And up until this day, we have not had a
10 determination of what's actually an RPPC, which I know is
11 going to be the discussion of our next section.

12 Now, in looking at this, what happens if a
13 company responds saying we don't have any RPPCs? Do you
14 send back a response saying, no, we believe this one
15 that's on your web site is an RPPC and that has been our
16 determination. How does that sort of work? Do you sort
17 of make a determination there and then you appeal that?
18 How do you --

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

20 LEAON: That's a good question. The answer depends if
21 it's part of a certification or if it's outside of a
22 certification. I guess in either case the product
23 manufacturer could appeal.

24 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: I think
25 they could.

1 This is Bill.

2 Just in terms of the things that we've seen so
3 far is that right now we're not sending out notices like
4 we talked about earlier to let people know that there's
5 simply a pool of companies. We're actually sending out
6 notices to indicate that they're part of a certification,
7 and we have a basis for sending out that certification.
8 We've identified products that we believe are contained in
9 RPPCs. So if we get back a certification saying we don't
10 have any RPPCs, then we have sort of a difference of
11 opinion there.

12 So we're sort of in that situation right now. We
13 have incomplete letters that are part of the 2005
14 certification where we've said -- you know, you wrote back
15 and said you either don't have any RPPCs or some of them
16 aren't RPPCs, whatever it is. And then we've sent back
17 out letters saying we've identified these containers and
18 that doesn't mean that the only ones that you made, but
19 we've identified these ones as to be ones that are -- we
20 believe are RPPCs.

21 MR. LARSON: George Larson.

22 Could I ask, your example, Bill, I was thinking
23 there might be two ways this container determination might
24 come to pass. And one is the Board contacts a company and
25 says we're putting you on notice that we think this is an

1 RPPC. But I think Randy's situation is that there's a lot
2 of people out there or companies out there who have
3 products in containers who just want an answer so that
4 they can plan so they'll contact you. It's initiated by
5 the company, not initiated by a Board's inquiry. And I
6 think they're different animals. Because if you're making
7 the contact, if I understand the previous discussions we
8 had this morning, it's the beginning of you're getting
9 six months' notice. Unless it's a new product, and then
10 you're getting 18 months notice. But if I'm a company and
11 I call you, the 30 days I believe is what this refers to,
12 or is it both?

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
14 LEAON: I think it would be in either case. If a company
15 were to come to us and ask for a determination of whether
16 these particular containers are regulated and we respond
17 back that staff's determination is that they are, and the
18 company then wants to appeal that, I think we would use
19 this procedure.

20 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: It
21 formalizes an informal procedure that we've been going
22 through.

23 MR. LARSON: I think we need it. To that end,
24 one of the problems I think that has existed over time
25 is -- and I'm going to say failure to perform kind of

1 thing. But the failure to get the answer back, because
2 you guys got five people doing the seventh largest economy
3 not world and you can't get to it maybe. So you have
4 30 days put in here, I submitted comments that if after
5 30 days their determination has not been made, there is a
6 default that the container will not be regulated under the
7 RPPC law. There's precedent in your solid waste facility
8 permitting process.

9 MR. BUSARD: Forever, George.

10 MR. LARSON: Just for that container as long as
11 it's on the marketplace. Just like you're compliant
12 forever within those limitations of containers change.
13 They don't go forever.

14 MR. BUSARD: This is Tom Busard, Plastipak.

15 If the State doesn't get -- Waste Board doesn't
16 get back to somebody within 30 days, they basically give
17 up the right forever for that particular container to be
18 regulated, or that's the suggestion.

19 MR. BUSARD: I'm just trying to understand.

20 MR. SABOURIN: Which would lead to automatic
21 appeal on everything.

22 MR. BUSARD: Yes, because you bury them in
23 paperwork.

24 MR. LARSON: I don't think there will be an
25 appeal. It would be the regulated community appealing the

1 Board's decision. But if there was no decision, then
2 there was no appeal, there would be no appeal because the
3 window of opportunity for the Board to make the
4 determination had passed. A little bit of an incentive to
5 get the determination.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
7 LEAON: It certainly would.

8 Okay. Do we have any other comments or questions
9 on this procedure? Any suggested tweaks or changes?

10 Okay. Well, why don't we delve into the
11 definition of an RPPC. We can pull up some of those
12 slides, Jerry.

13 Not only do we need to discuss the options that
14 we've identified, we've also need to -- well, we've
15 already discussed labeled volume this morning. I don't
16 think we need to revisit that one.

17 But we had laid out three options. And the first
18 two revolve around the capable of multiple reclosure
19 issue. And the first option we proposed was just
20 eliminating that requirement entirely. And that would
21 open it up to a much broader range of containers. And,
22 for instance, nursery pots might become regulated. This
23 type of packaging trays, buckets. So it would definitely
24 greatly expand the type of regulated containers.

25 The second option is a bit of a nuance where we

1 say it's capable of being reclosed at least once,
2 including during the manufacturing process. Now this
3 doesn't open up the universe as extensively as the first
4 option would be. But we feel it does address some of the
5 equity issues. For instance, these two containers are
6 virtually identical, but one is heat sealed and the other
7 is recloseable. Keeping one in and the other is out.

8 MR. LARSON: You make -- if you would make a
9 distinction because you just said capable of one
10 reclosure. This says capable of one closure.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
12 LEAON: Yes. Closure is the correct language.

13 --o0o--

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: Another example where you have one product with
16 the cap making it capable of reclosure and one product
17 that has been closed. So it's not capable of reclosure.
18 And one with the cap would be regulated, and the one
19 without the cap not regulated.

20 MR. SABOURIN: Under the proposal, Michael, both
21 of those would now be regulated.

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
23 LEAON: Correct. Under Option 2.

24 --o0o--

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: I think we have another one.

2 MR. BERUMAN: No.

3 MR. LARSON: Could I ask under that provision, or
4 you want me to wait?

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: Can you hold on? I want to get through these.

7 The next issue is that the container be entirely
8 made of plastic.

9 --o0o--

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: And this is the metal handle issue. So here we
12 have a container with a plastic handle that's regulated,
13 and then one with a metal handle that's not regulated. So
14 virtually identical containers. The only difference is
15 the handle. We believe that this is another equity issue
16 that we should address.

17 --o0o--

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: I think we can go back to the -- okay. Go ahead,
20 George, with your question.

21 MR. LARSON: I just ask on the capable of one
22 closure, in the instance of any product that's going
23 through a manufacturing process and there's something in
24 parenthesis there that I know that, "including but not
25 limited to the manufacturing process," in the regs. I

1 think it says that. It says, "including but not limited
2 to the production process." So if a product is packaged
3 during the manufacturing process in an RPPC, it has
4 utilized, if you will, the one closure that would enable
5 it to not be an RPPC. So everything that's produced would
6 be an RPPC, so it really doesn't identify any universe.
7 Everything.

8 RECYCLING TECHNOLOGY BRANCH MANAGER ORR:

9 Everything that's rigid and all those other things and
10 enclosed. If you look at the previous scenario, things
11 like this that don't have lids, buckets and things that
12 don't have lids, would not be capable of closing in the
13 first place.

14 MR. BUSARD: By making this change, you would
15 capture that next one that was that kind of clam shell
16 heat sealed versus --

17 MR. HOWARD: And that caulking, too.

18 MR. BUSARD: And that caulking tube, you close
19 that because you put tape on it. I don't think that's it.

20 MR. LARSON: A pool ball tray would be an RPPC.

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
22 LEAON: Under example one where if we eliminate that
23 reclosure change entirely, yes, that could be construed to
24 be an RPPC.

25 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is

1 similar to Oregon and how Oregon has their definition
2 structured.

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: But under Option 2, these types of packages we
5 level that playing field with these types of containers
6 where one is sealed and that other is hinged.

7 MR. LARSON: So what's your commentors saying?

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: Well, that comments basically were we really don't
10 understand that differences between that options. So we
11 were trying to --

12 MR. LARSON: Sort that out.

13 MS. LIVINGSTON: Down to English here.

14 MR. BUSARD: Tom from Plastipak.

15 That type of containers that have the top on
16 them, probably tennis ball cans isn't a good example
17 because that has metal on the top. But, you know, things
18 that snacks come in, all kind of snacks come in now they
19 have the foil lining on them and tear that off, are those
20 currently RPPC?

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: Not if they contain a food product.

23 MR. BUSARD: If they contain bolts or nuts -- but
24 not eating nuts. Are they if they contain other things?

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Well, if it's a tear-off top, it wouldn't be
2 capable of --

3 MR. BUSARD: But there's that little top that
4 goes back over.

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: If it has a recloseable lid, yes.

7 MR. BUSARD: Same package.

8 BOARD ADVISOR DAVIS: I thought the regs were
9 written such that the manufacturing process of putting the
10 lid on in the first place would count as just the second
11 option, single reclosure, single closure, or at least one
12 closure; is that correct?

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

14 LEAON: Under that language it's capable of at least one
15 closure. So --

16 BOARD ADVISOR DAVIS: It sounded like just
17 closing it the first time during manufacturing made it --

18 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Yes.

19 MS. LIVINSTON: What is the history of the
20 closure requirement?

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: Let me ask Jan that question, if we can put you on
23 the spot.

24 MR. HOWARD: Well, that's okay. It goes back to
25 when they had the task force and we had a contractor. And

1 it was -- they had it -- the law required us to do an
2 implementation plan. And it came out of that. And it was
3 a way to kind of like narrow it down on what is regulated
4 and what is not. And capable of multiple reclosures was
5 one of them. So I mean, I don't have all of it here with
6 me. But the history is back there on back and forth.

7 MS. LIVINGSTON: To limit the coverage. That was
8 the whole point.

9 MR. HOWARD: For it to be a rigid plastic
10 packaging container, it had to be capable of multiple
11 reclosure. Like the Aquafina right there can take the lid
12 off and on and open it and close it.

13 MR. BERUMAN: Didn't the law predate the
14 clamshell boom we're seeing right now, too.

15 MR. HOWARD: Don't disagree with that. I don't
16 think any of us would disagree with that.

17 MR. SABOURIN: This is Dennis Sabourin, NAPCOR.
18 The under example 1(a), would that include -- on
19 page 8, would that include things like flower pots?

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
21 LEAON: Yes.

22 MR. SABOURIN: And 1(b) would eliminate -- you
23 have to have some sort of a closure, one closure.

24 MR. POLLACK: I have a question especially on
25 this slide here and just to you folks.

1 Are many of these containers source reduced, or
2 did they contain recycled plastic when you look at the
3 vast universe of these sort of packaging?

4 MR. SABOURIN: I don't know. Maybe you can
5 answer that, because I'm more on the container side of the
6 business. I don't know about this.

7 MR. BUSARD: I don't know.

8 MR. POLLACK: I think one of the concerns is not
9 knowing the answer. It's my understanding that you won't
10 find a lot of recycled plastic in these sort of containers
11 or they --

12 MR. SABOURIN: You will.

13 MR. BUSARD: I actually asked two different
14 questions.

15 MR. POLLACK: I meant in these containers will
16 there be recycled plastic?

17 MR. BUSARD: Yes.

18 MR. SABOURIN: More likely in these containers to
19 have recycled plastic.

20 MR. BERUMAN: We should tell the people on the
21 phone we are looking at the clam shell packaging.

22 MR. BUSARD: No food contact. No real contact
23 clarity. Rigid contact clarity requirement. In other
24 words, for a bottle like this or something, there's a
25 little spot in there, it's seen as a big deal. It's like

1 contamination in there. It wouldn't be --

2 MR. SABOURIN: A lot of post-industrial, George,
3 used in this, a lot of off-speck resin, and recycled resin
4 because of the manufacturing requirements.

5 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: It's
6 not really a structural container though.

7 MR. SABOURIN: But in answer to your question, I
8 don't know about source reduction. I'm not close enough
9 to that.

10 MR. POLLACK: Just a follow up to that. I think
11 one of the issues is what sort of universe are you looking
12 at? Can the Board and their staff have the ability to
13 look at all the possible packaging that is out there?
14 Because if you go to any store now and if you see a heat
15 seal, you're talking about almost all the packaging that
16 is out there.

17 And I think one of the issues that I have is we
18 still haven't determined what's flexible and what is
19 rigid. And I think that we still need to make that
20 determination before we look at any of this. And also
21 under the -- with the regulations, it talks about having a
22 lid. What exactly is a lid? Because I think when you
23 look back as when they were developing the regulations,
24 Jan, you might remember initially they had it without lids
25 and they decided to come up with the lid. So the question

1 is what's a lid? Is it a top where it screws on? Is it a
2 clam shell that folds over if it's even? I'm not quite
3 sure what a definition of a lid is. I think those are
4 some of the issues we're wrestling with.

5 Along the same lines of determining an RPPC --
6 this might have been brought up earlier -- is how do we
7 measure whether it's a pail, the eight ounce or five
8 gallons. And I know that you took out -- I'm not sure if
9 we're going to discuss this later or it's part of the RPPC
10 about right now or the changes that it's going to be what
11 is labeled on the container is going to guide what size
12 that container is. And I believe there's going to be a
13 lot of opposition to that, because we believe the statute
14 did not indicate that there would only be one option of a
15 label that it's very unclear that would have to be a
16 statutory change.

17 MR. SABOURIN: There's another issue, too. If we
18 look at Option A and we go back to our guidelines of
19 increasing recycled plastics in products, things like
20 flower pots, black in color, it's an ideal use for
21 off-speck and recycled materials because they are black in
22 color. So that would act as an important market incentive
23 to drive recycled plastics. To that end, it would support
24 the California recycling infrastructure.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Okay. I think we better approach this in a
2 structured way. We did talk about labeled volume this
3 morning, Randy, but why don't we go ahead and revisit
4 that. And I think we have a chart. After Jerry captures
5 this thought on the reclosure, let's turn to the label
6 volume --

7 --o0o--

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: -- and finish with that discussion.

10 The way we've written the regulations on labeled
11 volume, it sets it up as a hierarchy. It would no longer
12 be at the product manufacturer's discretion to either use
13 the labeled or volumetric capacity. If there's a labeled
14 volume, we would use that. If there's not a labeled
15 volume, in that case the product manufacturer can use the
16 volumetric capacity. But I think that's actually
17 consistent with the statute.

18 MR. POLLACK: Under the statute under 42301(e),
19 it says, "ridged plastic packaging container means any
20 plastic package having a relative and flexible shape or
21 form with the minimum capacity of eight fluid ounces or
22 its equivalent volume and the maximum capacity of five
23 fluid gallons or its equivalent volume." And then
24 maintaining its shape.

25 When I read that, they're talking about

1 packaging. They aren't talking about what's contained in
2 the container. If you have a five gallon paint, five
3 gallons of paint that's labeled, that container is
4 slightly bigger than five gallons. And that's the
5 packaging. We aren't talking about the item that's
6 contained in there. And so that is our concern with
7 making the change in regulation. We believe that would
8 need to be a statutory change.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

10 LEAON: Okay. Well, I think, however, when you look at
11 the intent of the law, it's to support diversion and
12 markets for postconsumer material. I think the intent is
13 to include packages between eight ounces and five gallons
14 and to nuance it to the degree where it's 5.2 gallons.

15 MS. LIVINGSTON: That's not really a nuance. Six
16 isn't a nuance, so 5.2 is really not a nuance.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

18 LEAON: Even if it's labeled five gallons?

19 MS. LIVINGSTON: Well, yeah. I think that's
20 right. Because the statute is very clear that it's
21 limited at five gallons. So if it contains -- if the
22 container can contain more than that, it's larger than a
23 five gallon container.

24 MR. POLLACK: And this is Randy.

25 When the staff does your calculations, you will

1 take, for example, say a clam shell. You will pour water
2 into it or something to figure out what is the capacity of
3 that. And I don't think that you're going to alter that
4 if it holds more than five gallons or less than eight.
5 You know, I think that you're going to work within those
6 same parameters.

7 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: I think
8 what we're trying to do is minimize the number of
9 containers we have to pour sand in. So if there's a
10 simple clean way to tell what the capacity of that
11 container is, I think we're just looking to go that way.

12 MR. SABOURIN: It's more confusing to change it.
13 Just leave it the way it is.

14 MR. POLLACK: And that just brings up -- this is
15 Randy Pollack.

16 As long as we're talking about that section, it
17 talks about a rigid plastic packaging being relatively
18 inflexible. And I think that is a big struggle for many
19 companies out there. What is inflexible versus flexible?

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
21 LEAON: I think if you continue reading the definition, it
22 says it is capable of maintaining the shape whether empty
23 or full. And that's the language that we've been using as
24 guidance. If the container can maintain its shape whether
25 holding the product or not holding the product, that

1 really gets to I think your question of whether it's
2 inflexible or relatively inflexible.

3 MR. POLLACK: Right. But then it comes up with
4 the other point, you can twist it or bend it without
5 damaging it. And you have many containers out there, a
6 clam shell or some other thing, where you could fold down
7 the plastic and all that other stuff, and it is still
8 operational and may have some creases in it, but it still
9 can be used. And so that's one of the issues. Well, that
10 tends to be inflexible at that point. So maybe it is not
11 a rigid container under the law.

12 And these are just some of the difficulties we're
13 having as retailers or product manufacturers out there,
14 what is actually an RPPC and what's included under the
15 law.

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
17 LEAON: Okay.

18 MS. LIVINGSTON: Again, as a new-comer, what's
19 the purpose of the rigid versus not rigid? So just to try
20 to limit --

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
22 LEAON: Yeah.

23 MS. LIVINGSTON: Reusable, identifiable
24 packaging.

25 MR. BUSARD: Otherwise, you could have a sandwich

1 bag that you can close at the top and that would be
2 included.

3 MS. LIVINGSTON: There you go.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: Randy, let me ask what would you see as -- what
6 type of packaging are you envisioning that would not be
7 regulated because it's flexible, I guess?

8 MR. POLLACK: I think that you could see -- look
9 at a detergent bottle. It's clearly a rigid bottle and I
10 don't think anybody would dispute whether that's it. How
11 about some of these clam shells that are more flexible?
12 Or how about there's little tubes out there that may
13 contain different products. I think there's a variety of
14 items out there that it's unclear whether they're actually
15 an RPPC or not, because they can be twisted. They can be
16 folded. They can be messed all the way around. But they
17 may have creases in it, but they're still functional.

18 STAFF COUNSEL BRANCH: How would you define that
19 line?

20 MR. POLLACK: I have no idea. I tell you what.
21 I think initially when they enacted this law that they
22 were looking at primarily the detergent industry. We had
23 the laundry bottles, the Windex or containers like that
24 that had screw tops. I think that's what they were
25 initially going after because those were easily

1 identifiable.

2 MR. YEDIDSION: This is Parham.

3 Initially, the intent specifically was to include
4 what's commonly known as a five gallon bucket. And it was
5 shortsightedness or whatever in listing it just as that.
6 But the intent did include that specifically.

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

8 LEAON: Okay. Thanks, Parham.

9 Okay. So we talked about labeled volume,
10 flexible versus inflexible. Why don't we go back to the
11 actual examples and the reclosure issue. I would
12 certainly be interested in hearing any comments about
13 which one of those examples might be preferable or if you
14 have objections to any one of them.

15 MR. LARSON: Does that include Option 3, leave it
16 as it is?

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

18 LEAON: Yes.

19 MR. LARSON: Going back to the comments made by
20 Jan, the study that was conducted, the group that
21 participated in the development of the original definition
22 was a process that went over some years from the initial
23 introduction of the draft regs. So it was as well vetted
24 a definition that I've seen in state government. And I'm
25 just not sure why it needs to be changed. So as I

1 commented, I think it ought to be left alone, because I
2 don't think these other two achieve what was intended.

3 MR. MCANENY: This is Jack Mcaneny.

4 If I could offer a general comment. I think if
5 the intent here is really to try to drive and improve the
6 understanding of clarity of the existing definition that
7 there's other vehicles that might accomplish that. I
8 think the container determination process would play into
9 that. But also greater use of your website to post
10 examples or interpretations or otherwise drive clarity in
11 terms of what the current interpretations are might speak
12 to that.

13 If the intent is to expand the scope, to reach
14 out and get certain types of packaging, then, you know, I
15 think there's two things that have to be considered. And
16 one is the point that Randy raised around consistency with
17 the statutory language. But I think the other
18 consideration is expanding the universe of products also
19 means expanding the universe of product manufacturers that
20 you're dealing with. And we spent most of the morning
21 talking about realistic resource limitations and how that
22 might come into play.

23 So I just think what it needs to come back to is
24 what's the real intent here. And if it is to try to
25 clarify the existing definition, then my thought would be

1 to maintain the status quo, for example, for a year and
2 maybe start thinking of other mechanisms to try to drive
3 that.

4 MR. HOWARD: And just speaking -- this is Jan.
5 As part of the fact that it was to help to level the
6 playing field. Because you have as you saw up there on
7 the caulking tube, you have identical containers up there.
8 But one has an attached lid with it. The other one
9 doesn't. So because it has an attached lid, it becomes a
10 regulated container. Because the other one doesn't, it is
11 not. So we're trying to, you know, have it somewhat I
12 mean --

13 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: I don't
14 think the container determination process would clarify
15 those differences. You might say is the caulking tube in
16 or out. But you're not going to be able to say is this
17 one in or out. Obviously, this illustration would help
18 with that under the status quo, but I don't think it makes
19 sense.

20 MR. SABOURIN: I find the status quo as it's
21 presently written is discriminatory against certain
22 packages and it doesn't lend to consistency or
23 transparency. And I think it does nothing more than put
24 further burden on staff trying to determine whether
25 something is in or out. So I would opt for either A or B.

1 1 or 2. Thank you.

2 MR. POLLACK: This is Randy Pollack.

3 And I would go for the status quo. Because I
4 think what we see here is that there's limited staff that
5 has the ability to review all these certifications. And
6 if you are probably going to 10 fold or 20 fold increase
7 the amount of items or packaging that would be reported to
8 the Board if heat sealed or not reclosables are included.
9 I think that was one of the concerns when they originally
10 drafted the regulations.

11 And I can tell you right now that the staff has a
12 lot of work just because they're still trying to finish up
13 the '05 certification process and is still waiting for
14 responses. So instead of reporting six or eight items,
15 you're going to have companies reporting 50 to 60 items.
16 And I don't think that at this point in time -- if the
17 Waste Board had a staff of 50, I would say good idea. It
18 would be good. But I think right now that there are
19 certain delays already occurring at this Board that just
20 getting through the process is moving very slowly, that if
21 we expand the program even bigger, I think delays are
22 going to be more significant.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: Okay. Do we have any comments from folks on the
25 phone?

1 MR. O'GRADY: This is Bill O'Grady, Talco
2 Plastics.

3 I think irrespective of whether or not the
4 Integrated Waste Management Board has the resources to
5 expand the field, we ought to be looking at this from the
6 focus on the intent of what is being discussed. And just
7 for example, the bucket with the metal handle as opposed
8 to the plastic handle, you know, the intent really is to
9 level the playing field here and not regulate some of
10 those manufacturers and let others go unregulated. And
11 also with the same idea that not allow, let's say,
12 everybody to go to metal handle and they're in compliance
13 or they've got -- I know the word is misleading but maybe
14 exemption. So I just want to draw everybody's attention
15 to what we're trying to achieve here.

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
17 LEAON: And just if I could echo what Jan and Bill just
18 said is I think our intent. Primary intent behind this is
19 to address this unequal playing field here and make sure
20 that product manufacturers are treated equally. Where you
21 have one that has to be in compliance because they've got
22 a plastic handle and one that's not because it's got the
23 metal handle. Or one that has a clam shell and they heat
24 seal it, so it's not regulated. And the other guy with
25 the recloseable clam shell is regulated. So that is

1 definitely one of the primary motivating factors in us
2 proposing this change.

3 MR. POLLACK: This is Randy Pollack.

4 One of the issues is when you do certifications
5 with companies, I know there are certain companies that
6 are only going to have heat sealed items. I would assume
7 a lot of the companies -- say, for example, retailers.
8 They probably have both items. So I still think that you
9 are still catching a lot of those companies under the law.
10 I don't know how many people are just escaping out because
11 they're saying we have nothing recloseable and they have
12 all these other plastics. Maybe a little bit different
13 with the metal handles and the plastic handles. I could
14 see it there. But I assume companies are being captured.
15 Because if they're selling something with heat sealed, I
16 assume they must have some reclosables also.

17 MR. YEDIDSION: Out of curiosity, what is the
18 major difference as far as RPPC is concerned between one
19 closure, one reclosure, and status quo?

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
21 LEAON: Okay. Well, under the status quo, if a container
22 is heat sealed, it's not capable of multiple reclosure,
23 therefore it would not be regulated.

24 MR. YEDIDSION: Even though it may have an over
25 lid?

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: Yes. If that lid has been heat sealed, so when
3 you take the lid off, you can't reclose the container
4 because you damage it.

5 MR. YEDIDSION: You can put the plastic lid back
6 on it.

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

8 LEAON: If you can put the plastic lid back on it, it
9 would be recloseable and would be a regulated container
10 under the current definition.

11 MR. YEDIDSION: And most products that are heat
12 sealed -- I know industry somewhat is trying to go that
13 direction. And actually it's a valiant effort just
14 because of reducing packaging. Most of those products
15 that are only going to be heat sealed are in the food and
16 that type of thing that doesn't fall under RPPC anyway.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

18 LEAON: No. There's a lot of heat sealed packaging that
19 don't have -- food is not the product that's in the
20 package.

21 MR. O'GRADY: This is Bill O'Grady.

22 Just for my clarification or edification, maybe,
23 Mike -- and Tom brought this up earlier. I didn't quite
24 hear all of it about the tennis ball can. But if the
25 tennis ball can is heat sealed but comes with a plastic

1 lid and you break that seal but you can reclose it with a
2 plastic lid, it falls under the RPPC?

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: Probably, yes.

5 MR. O'GRADY: Or for instance if the tennis ball
6 can has a metal or aluminum seal, but on the bottom they
7 provide a plastic lid and once you pop that seal, that
8 metal seal, does it become an RPPC?

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

10 LEAON: Say that again, Bill.

11 MR. O'GRADY: In other words, tennis ball can
12 that has a metal lid, aluminum, has a pull top to open it,
13 comes with a plastic lid on the bottom that you can remove
14 and use that to recover that package, is it an RPPC or
15 does it fall under a metal handle type or metal lid?

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

17 LEAON: Because it would be recloseable, it would be an
18 RPPC.

19 MR. O'GRADY: Then if a heat sealed package has
20 the same opportunity or same thing, would it be an RPPC?

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: If it came with a lid that would enable it to be
23 reclosed multiple times, yes.

24 MR. BUSARD: The picture they're showing up on
25 the board, I don't know if you can see. It is two --

1 MR. O'GRADY: The picture they're showing,
2 there's one that can be snapped shut and the other one has
3 to be cut with a pair of scissors and can't be reclosed.

4 MR. BUSARD: Right.

5 MR. SABOURIN: That's the crux of what they're
6 looking for.

7 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: We've
8 also seen ones that are micro-perfed on there as well. So
9 you don't have to use the scissors, but they can't be
10 reclosed.

11 MR. O'GRADY: What's the difference between
12 something like that and the paint can or the wood putty
13 can that has a plastic lid as opposed to the one with the
14 metal lid?

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
16 LEAON: Well, the other example is a metal handle.

17 MR. O'GRADY: Metal handle. Sorry.

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
19 LEAON: There was language put into the regulation -- was
20 that in the regulation?

21 MR. BERUMAN: Entirely made of plastic.

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
23 LEAON: Entirely made of plastic.

24 MR. HOWARD: Excluding caps, lids, and labels.

25 MR. O'GRADY: I'm just saying drawing the

1 correlation that if you have a heat sealed package and a
2 recloseable package clam shell and one is not regulated
3 the other is, isn't that similar to the theory that if you
4 have a metal handle, it's not regulated. But the one that
5 does have the plastic handle is regulated. Isn't it kind
6 of like in the same vain or the same -- isn't that a level
7 playing field we're trying to achieve or get to?

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: Yes.

10 MR. BERUMAN: And that's what we have.

11 MR. O'GRADY: I think we're getting lost in the
12 distinction of the definitions, but we're straying from
13 the intent.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

15 LEAON: Okay. So given that, Bill, which of the examples
16 do you think would make most sense?

17 MR. O'GRADY: In terms of being regulated or not
18 regulated?

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

20 LEAON: Yes.

21 MR. O'GRADY: I think you need to level the
22 playing field. I don't think it's fair to the
23 manufacturers that are regulated today making plastic
24 handles should not be able to -- with the ones with the
25 metal handles not being regulated. There's no parity

1 there. You want to achieve some parity.

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: So you would support either example one or two?

4 MR. O'GRADY: Yes.

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: Do you have a preference or one or two?

7 MR. O'GRADY: What did I say in the survey?

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: I'd have to go back. I'm putting you on the spot.

10 You don't have to answer that.

11 MR. O'GRADY: No. Give me a second. Let me see.

12 Well, you know, I guess if I had to choose here, I would

13 probably prefer example one maybe.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

15 LEAON: Okay. And that's because it would expand the

16 universe of regulated containers. And that will go the

17 furthest towards supporting PCM demand?

18 MR. O'GRADY: Well, yeah. And I think that the

19 second example is a little bit abstract in terms of

20 language.

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: Okay.

23 MR. O'GRADY: I think when you say capable of one

24 closure is kind of how do you really interpret that? I

25 think the first one is pretty succinct and straight

1 forward. The second example is a little bit abstract and
2 convoluted, especially in the explanations provided.

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: Okay.

5 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
6 Bill. Just one comment and one observation.

7 If there are other ways to get at some of these
8 issues in terms of leveling the playing field, and we took
9 sort of a first cut at this concept of capable of at least
10 one closure, if there are other ways to sort of accomplish
11 what we've been talking about in terms of leveling the
12 playing field, you know, we definitely would be open to
13 suggestion.

14 The other thing is more of an observation that in
15 terms of the group that we talked about that sort of came
16 up with some of these concepts, that was back between 1991
17 and 1995. And at that time, we had never conducted a
18 certification. And so we have now ten years of experience
19 in doing these certifications and sort of the accumulated
20 knowledge and experience that we've got. We've also seen
21 how various companies have responded to more compliance.
22 And some of them have used these provisions to become
23 unregulated.

24 So, you know, we're not necessarily talking about
25 people that happen to make the heat sealed package or

1 happen -- they're making packaging decisions, packaging
2 choices based on these provisions of the regulations. And
3 so if there's -- not only is there a level playing field
4 issue between companies, but also I think some major
5 unintended consequences in terms of packaging decisions
6 that people are making. And if that's where we want
7 people to go, sort of like one certification they're out
8 of compliance and the next one they're in compliance
9 because they heat sealed the packaging, is that really
10 what we're trying to accomplish in terms of putting the
11 recycled content into packaging? And so I think that the
12 experience we had in the unintended consequences that
13 we've seen is really also part of that leveling the
14 playing field.

15 MR. POLLACK: This is Randy Pollack.

16 I think the issue we have to look at, it's great
17 getting these packaging and trying to get them back in
18 use. The problem is in many jurisdictions it's not set up
19 to get it back into the system. I think what we're doing
20 here is working out one end, but we have another different
21 part that's not being utilized and trying to figure out
22 how to handle that. Because I think you had a lot of, for
23 example, curbside programs that won't do anything with
24 this plastic that you pick up, that they'll probably
25 landfill it for the most part.

1 I know that, for example, I was going to start a
2 polystyrene program curbside, but most jurisdictions
3 probably -- and you folks can probably speak to it better.
4 I don't think there's a lot of curbside programs that
5 would do anything with this. It's great we're trying to
6 include all this, but how do we include the local
7 government to get involved with this to try to figure out
8 what's the next use of these packaging.

9 MR. SABOURIN: And sometimes what happens because
10 you're trying to find market-driven initiatives for those
11 materials that are being recycled today are being diverted
12 from the solid waste stream. Now certainly can't argue
13 that if you utilize recycled content in a paint can, is
14 that paint can going to be recycled? Probably not.
15 However, you're not worried about that paint can, per se.
16 You're worried about having a market-driven initiative for
17 those materials that are, in fact, being collected. Let's
18 say detergent bottles.

19 MR. BUSARD: This is Tom.

20 Just to follow up on Dennis' point. I guess the
21 question is kind of a catch 22, because would that paint
22 can be recycled whether it had recycled content in it or
23 not or whether or not it was regulated? I mean, so I
24 think Dennis makes a good point. It's kind of apples and
25 oranges.

1 MR. POLLACK: If you take like a clam shell,
2 which will outweigh all the detergent bottles that are out
3 there if all these are contained within the program, it
4 will vastly swamp I think what is the PET and HTPE
5 containers right now. And I think that is one of the
6 issues that -- we're dealing with that with the
7 Legislature trying to figure out how do you handle that
8 sort of plastic.

9 MR. YEDIDSION: I, for one, am willing to let go
10 of clam shells so that Randy is happy.

11 MR. POLLACK: Thank you. I agree.

12 MR. YEDIDSION: No problem.

13 MR. LARSON: This is George.

14 Follow up on Randy's comment. I think there is a
15 lack of information that could be very valuable on the
16 collection infrastructure side. Just something as simple
17 as a survey or an analysis -- and I know you know all the
18 curbside programs in California. And each of the
19 jurisdictions who submit planning documents have a
20 recycling coordinator. So it probably wouldn't be a huge
21 fiscal cost issue to gather information on who's actually
22 doing what with these types of containers that would even
23 afford them the opportunity to get into the recycling
24 stream. And I believe it was said earlier that every
25 plastic is recyclable, and I believe that. But it has to

1 be in sufficient volumes to make the processing and
2 handling of it cost effective. And that's one of the
3 deterrents I think to expansion at least beyond the soda
4 bottle and milk jug which everybody loves. Not a
5 regulatory issue but --

6 MR. BUSARD: This is Tom.

7 In some ways, you might look at it if those
8 things were regulated -- and will sound like pretzel
9 logic, so we'll get to the end before you throw anything
10 out. If they were regulated and they had the opportunity
11 to put recycled content in them, which many of them do,
12 those are real good application for recycled content PET,
13 as Dennis mentioned earlier. That would give companies
14 the opportunity to use the material they use there
15 somewhere else in their system or for their averaging. So
16 there's a lot of different pros and cons.

17 MR. SABOURIN: It's the same market-based
18 initiatives we talked about PET and polypropylene. To
19 support the recycling infrastructure here in California,
20 because there was a growing PET recycling infrastructure
21 here in California. And unless you have market-based
22 initiatives, it's going to die of its own weight.

23 MR. BUSARD: They're collecting 300 some odd
24 million pounds a year here in California and growing.
25 Probably be closer to 350 this year of the 1.2 or 3

1 billion the whole United States collects.

2 MR. O'GRADY: This is Bill O'Grady.

3 Tom, you make an excellent point that the clam
4 shell packaging is an excellent opportunity to utilize
5 recycled content. Quite frankly, as George pointed out,
6 we like the beverage bottles. But in reality, most of
7 that material goes into carpet fiber or fiber related
8 usage. So I think it just opens the horizon for other
9 uses. And it does get companies to that aggregate
10 averaging.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
12 LEAON: Okay. So have we beat that one to death, or do we
13 need additional comments on RPPC definition?

14 MR. LARSON: I thought we agreed we'd leave it
15 alone.

16 MR. POLLACK: Mike, Randy Pollack.

17 The other question that came up what Harllee had
18 mentioned at one of the last meetings about the definition
19 of an RPPC may be including say a CD case. I'm not sure
20 if this is an appropriate time to bring that up, if that's
21 an issue you're still contemplating.

22 CHAIRPERSON BROWN: Well, Jerry has a slide.

23 MR. POLLACK: I was hoping I'd get a break on
24 that one.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Under the status quo, maybe you can run through
2 these slides. Under the status quo definition, these are
3 the containers that we would feel would be in.

4 --o0o--

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: Those are tubes where you'll find these at office
7 supply stores and the whole paper clips and other types
8 of --

9 MR. POLLACK: I'd argue those may be considered
10 flexible.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: Reclosable packaging. And again it would fit into
13 your issue because these are somewhat flexible.

14 --o0o--

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

16 LEAON: And the CD spindle case. I'm not sure what the
17 one on the right is.

18 MR. BERUMAN: That's a watch box where you put
19 like a wrist watch.

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

21 LEAON: That's a lid, not a handle?

22 MR. BERUMAN: It's a lid. It should be opened.
23 But that's a lid. See a lot of batteries on the one on
24 the far left.

25 MR. BUSARD: Is that polycarbon?

1 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Looks
2 like PVC.

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
4 LEAON: I don't know the resin type.

5 MR. BERUMAN: That's all I got.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
7 LEAON: Okay. So with that --

8 MR. POLLACK: I guess I can start with the CD
9 cases and other items that are stored by consumers to use
10 at a later time. For example, I think it's very clear
11 that under the law that if you have, say, a drill that you
12 buy in a plastic case because you store it in the plastic
13 case, that's not included under the law because it's all
14 considered a product. You're buying it. It's not
15 packaging. It's something that is part of the item.

16 And I know there hasn't been any clarification on
17 these points. And I think maybe it's going to be a case
18 by case basis. But I would ask the staff to look at some
19 of those definitions and those that are currently maybe
20 exempted or excluded under the law, that there are a lot
21 of items out there that people may use in a seasonal time
22 and that they need to be placed back into a package for
23 safekeeping. And that is one of the reasons why they have
24 that sort of packaging, so things can be replaced into it
25 and used at the next occasion to protect that item from

1 whether it's dust or breakage, along those lines.

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: Okay. Any other comments or thoughts on the
4 status quo and the container examples?

5 Well, I think we're probably done with RPPC
6 definition. I know there's a lot there. Appreciate
7 everybody's feedback on that.

8 We covered the product manufacturer definition.

9 I think the thing we need to talk about next are
10 the documentation requirements under the new compliance
11 option which is page 27 through 29. The way we envision
12 this working is that a product manufacturer is still going
13 to need to submit in their certification report on their
14 regulated product lines and the associated containers, the
15 container type, because we will need that information to
16 get the base line of how much PCM that product
17 manufacturer needed to comply through the PCM option.
18 That's the base line number on which we'll then measure
19 against how much California PCM is being used. And under
20 the new compliance option, that use can be reported
21 directly by the product manufacturer that they're using
22 California PCM and other products or packaging that is not
23 regulated RPPCs, and they can credit that to the amount
24 they would need to comply in the regulated lines.

25 MR. SABOURIN: Michael, if you have a PCM that

1 was being used that was out of supply from outside of
2 California, you then couldn't use that extra credit;
3 correct?

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: That's correct. Yes. That's correct.

6 MR. SABOURIN: Going back to the example Jack
7 had.

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: That's correct.

10 MR. SABOURIN: Thank you.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: These compliance options are only available in
13 association with use of California PCM.

14 So we'll be asking for the names, the contact
15 person, address, and phone number of the container
16 manufacturers or supplier of the California PCM, the
17 percentage of postconsumer material used in RPPCs, other
18 products, or packaging.

19 MR. LARSON: I have a question about the next
20 one, H. It's page 27(a) to the bottom, "copies of the
21 container manufacturer's certification and information,"
22 that seems to be calling for what is the standard
23 certification if you were not using this alternative
24 compliance option. Because this is what you would have to
25 do under what is now the existing regulations. If you're

1 using the alternative and providing that information which
2 you just described, some type of verification that the
3 materials were sourced out of California and then your
4 list of containers for which you may apply this, I don't
5 understand why H would even be necessary. But maybe I
6 missed something.

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

8 LEAON: First, I have to do the cross reference to
9 17945.4.

10 MR. HOWARD: I think part of that maybe though is
11 to clarify that they may be having some containers that
12 are using -- made with the 45 percent postconsumer
13 material or 15 percent postconsumer material, but they're
14 not using California resin. So we still need to have that
15 container manufacturer information for those containers.

16 MR. LARSON: Okay. Well, maybe this should be
17 prefaced for those containers not utilizing California
18 sourced postconsumer resin, the standard container
19 reporting process would apply.

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

21 LEAON: Okay. I have to take a look at this. And these
22 are the type of comments that we're looking for on this.
23 So I appreciate that, George.

24 MR. LARSON: I think you're right on.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: On page 28, the other option is to a third-party
2 contractual agreement. Basically the same stuff. And F
3 is asking for the total weight of postconsumer resin
4 purchased from California sources for use in the
5 manufacture of RPPC or more plastic products or packaging.
6 And also we'll be asked -- for the third party we'll
7 asking for the names of the contractors, contact person,
8 address, phone number, copy of the contractual agreement
9 for the purchase of the PCM and generated in California to
10 be exported to another state. And again, that can go into
11 any other product or packaging. And the contractual
12 agreement should include the information listed under H on
13 page 29.

14 So any feedback on these requirements? Too much?
15 Too little?

16 MR. LARSON: I think they're reasonable
17 information to make the determination. Just for
18 consistency, sometimes in here you refer to reporting in
19 grams, others in weight. So I don't know if you want
20 to -- if there's some standardization on it's some
21 volumetric reporting in some weight unit. I think weight
22 is what you're after.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: Okay. Any other questions, comments, concerns on
25 this section?

1 Now in Section 17945.4, we added language on
2 container manufacturer certification information. That
3 would clarify for the container manufacturer what they
4 should be reporting, including information on the product
5 manufacturer, their supply containers to, documentation
6 for postconsumer material content, documentation of source
7 reduction. And this gets I think to the issue, George, on
8 container manufacturer liability. We want to make sure
9 they're getting accurate information to the product
10 manufacturer.

11 MR. LARSON: This is George.

12 I know it's referred somewhere else in the regs.
13 I can't put my finger on it. Do you not think putting a
14 similar statement in here or a reference to the fact that
15 they're subject to the same fines and penalties for that
16 submittal of false information?

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
18 LEAON: Okay.

19 MR. LARSON: You have the under penalty of
20 perjury, but nobody ever -- no one is going there.

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
22 LEAON: Okay.

23 MR. MCANENY: This is Jack Mcaneny.

24 I just had a question. One of the pieces of
25 documentation that's required from the container

1 manufacturer is the number of containers they supplied.
2 That doesn't necessarily always line up with the sales
3 numbers that would ultimately be used to determine
4 compliance on an average basis. I was just curious why
5 you asked for that specific data. Because as we went
6 through our last certification exercise, we had a lot of
7 data from our suppliers that we didn't utilize in our
8 ultimate determinations. We went by our sales data. And
9 they were close, but there wasn't a use for an application
10 for themselves. So I was curious if there was a reason
11 why you all asked for that.

12 MR. BUSARD: This is Tom.

13 I have to agree with Jack, because it makes the
14 inference that all the containers supplied to that company
15 go to California. If they don't, there's an extrapolation
16 you probably have to do there. Somebody has to do -- we
17 would have to do between our two companies.

18 MR. POLLACK: This is Randy Pollack.

19 A perfect example is I received some information
20 from a container manufacturer, three million containers,
21 because that was their sale company wide or maybe to a
22 bunch of retailers. So what we do is I get the numbers
23 from the retailer as to what their sales were in
24 California, which could be 20,000.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Well, I think the idea is to make sure that the
2 product manufacturer is getting accurate data from its
3 container supplier. I don't think we want the container
4 manufacturer reporting the total number of containers they
5 have been run on. But for each product manufacturer that
6 they're reporting, these are the number of containers we
7 supply to. This was the postconsumer content of those
8 containers. You're looking at paragraph C on page 31.

9 MR. MCANENY: It's really just a question. It's
10 more of a burden for the container manufacturers and us.
11 And in actuality, we report out our nation sales data.
12 But it seemed like a lot of effort on the part of our
13 container manufacturers when what we relied upon was our
14 sales data. And those numbers were fairly close. But
15 depending on when certain batches were made and produced
16 on a calendar year basis and inventories and all those
17 other kinds of things, they don't always match. So just
18 trying to understand why.

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
20 LEAON: So your suggestion, hearing that feedback, would
21 be not ask for the number, but just have the container
22 manufacturer also reporting the size and type of each of
23 the RPPC.

24 MR. MCANENY: And the PCM resin levels. Really,
25 I'm questioning the need for number one.

1 MR. BUSARD: Because as Jack mentioned, the
2 timing of production versus their shipment to the state of
3 California could be off significantly. I mean, not just
4 days or weeks. So I guess I'd have to second your
5 comment. I don't know how that information does -- the
6 concern would be it comes in and it doesn't match up.
7 Some people are saying this doesn't match up. What's
8 going on.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

10 LEAON: Okay.

11 MR. BUSARD: Let me give you an example that
12 doesn't involve Jack's company so it's more benign. If
13 you're making anti-freeze bottles, which we make, they're
14 made seasonally, and you may make them for June for
15 shipping the rest of the year. I'm reporting I made
16 anti-freeze bottles of this particular type. But if I
17 send you that documentation, it won't match up anywhere
18 close to what the manufacturer is saying they shipped into
19 the state and had recycled content in. It may throw some
20 flags up that just don't make any sense.

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: That makes sense.

23 Okay. Anything else on this section?

24 On page 32, we inserted language. This is in
25 relation to compliance calculations and formulas. The

1 Board will use formulas below to analyze product
2 manufacturers' claimed compliance. And calculation shall
3 be carried out to two decimal places. The product
4 manufacturers may use other mathematical formulas other
5 than those listed below to calculate their degree of
6 compliance. Any product manufacturer that uses alternate
7 formulas should be prepared to explain why his formula is
8 equivalent to the following formulas. And then there's
9 formulas for PCM content, source reduction, reuse, refill.
10 And the particular products associated are resin specific
11 container recycling rates. Also the floral industry. So
12 there's several sub-sections here. And we'd be happy to
13 take the written comments on these formulas, and we did
14 get a couple comments about calculation errors in that
15 which they fit.

16 If anybody has any specific comments they want to
17 raise on these now, we can do that. Or as I said, we can
18 take your written comments.

19 Any questions or comments on the formulas?

20 MR. HOWARD: Just to note, these aren't really
21 new formulas. This has just been part of the
22 restructuring and making the regulations easier. The
23 newer formula that's in there is the one for the
24 California postconsumer.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Okay. On page 42, changes to the packaging
2 waivers, any questions or concerns on these changes?

3 MR. BUSARD: Is there a definition somewhere in
4 the statute for what a new package is?

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: No.

7 MR. BUSARD: They've pretty much laid out of what
8 new means.

9 STAFF COUNSEL BRANCH: There's a definition of
10 product.

11 MR. BUSARD: This says product or package. Let
12 me give you an example. If I'm making a package that has
13 a paper label on it and it's an in-mold label and now I'm
14 making a package that is the same or nearly the same but
15 it has a plastic label on it, that's to me a structural
16 change. And it's good for different reasons. But does
17 that make it a new package? How do you define -- Randy, I
18 may be asking your question here.

19 MR. BERUMAN: It's on page 9 is the definition --
20 I mean page 6.

21 MR. HOWARD: Page 6 we have a definition for
22 newly introduced.

23 MR. SABOURIN: What page is that?

24 MR. HOWARD: Page 6, item 9 for newly introduced
25 product or package.

1 MR. POLLACK: My comment on this section is I
2 just had to double check that here you're making it
3 permissive for the Board whether or not to grant a waiver
4 for a newly introduced package. And it's my understanding
5 under the statute that you are exempt from compliance with
6 the law until after a year has gone by.

7 MR. HOWARD: You have a one-year waiver.

8 MR. POLLACK: Right. It's introduced after
9 January 1st and you take the partial year and the
10 following year in determining your compliance. But this
11 sort of sets it up that the Board has to give you a waiver
12 or may decide to. And I don't think that's a proper
13 characterization of the current law.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: Okay.

16 STAFF COUNSEL BRANCH: Which part of the statute
17 are you talking about?

18 MR. POLLACK: Now I have to go find that.

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
20 LEAON: 43330. The Board shall grant a waiver from the
21 postconsumer content requirement Section 42310, but not
22 from any other requirement if the Board finds one of the
23 following. That has a list of technologically infeasible,
24 the food and drug or federal laws. Okay.

25 Any other comments or questions on the waiver

1 language?

2 Okay. Next section is 17946.5 on page 45. The
3 change is just the format.

4 MR. POLLACK: This is Randy Pollack.

5 From this morning's discussion, this is going to
6 be clarified to ensure that cosmetics and food are exempt,
7 that there was no intention to somehow bring them in under
8 the regulations. This was more going towards the
9 hazardous materials, making sure that you give the proper
10 data to determine whether they were hazardous or not.

11 MR. SIMONI: Could I follow up on that if I
12 might?

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
14 LEAON: Yes.

15 MR. SIMONI: I'm trying to read item number four
16 up there, listen respectfully.

17 My name is Ralph Simoni. I was not here this
18 morning when we might have moved through some of these
19 things. I represent the GMA-FPA and on this issue have
20 represented the National Food Processors Association, now
21 the Food Products Association, for a number of years going
22 back to when this was discussed in the Legislature.

23 And I guess my first question is -- and it
24 relates to the exemptions process, especially the
25 exemption in A2 with regards to cosmetics and food. Why

1 did you delete the definition of food under the
2 definitions section? Was there a particular reason why
3 you would do that?

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: It was defined in statute elsewhere, is the simple
6 answer.

7 STAFF COUNSEL BRANCH: The regulatory provisions
8 that talk about food, et cetera, make reference to the
9 Food, Drug, and Cosmetic Act as defined in the Food, Drug,
10 and Cosmetic Act. The regulations we had beforehand and I
11 crossed out were just redundant. They were saying what
12 was already in the Food, Drug, and Cosmetic Act. Instead
13 of having a bunch of excess verbiage in there, I just cut
14 it out. That was all that was behind that.

15 MR. SIMONI: And then as to the restructuring of
16 this Section 17946.6 -- and again, pardon me if I'm
17 redundant to things that occurred this morning or even,
18 Randy, to some of your comments. But the way you've
19 restructured Subdivision B would be to make a significant
20 change to how this is done. And that is you are changing
21 it from I don't have to submit information and request an
22 exemption to an affirmative, I must -- in order to receive
23 an exemption, I have to go through this act of petitioning
24 the Waste Board to do that.

25 To me, absent any statutory change from 1996,

1 that is a significant deviation from where you have been
2 in the past decade. And from a food producer's
3 standpoint, we, number one, don't think it's consistent
4 with existing statute. Number two, we don't see a reason
5 why it needs to be changed. And number three, don't like
6 it.

7 And then we move to page 46, item 2 there, that
8 seems to -- when you move to the affirmative in order to
9 receive an exemption you must file something with us, you
10 seem to be adding a process whereby the person seeking the
11 food exemption would have to provide you with a specific
12 citation. And I would assume that absent that citation
13 they would not be given the exemption. And again, that is
14 not consistent with the statutory intent when Randy and I
15 and a number of others way back in 1996 fought very hard
16 to make this an automatic statutory exemption.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
18 LEAON: Well, we did discuss this this morning. And as
19 Randy alluded to, we're going to clarify that the
20 documentation we're asking for pertain to paragraphs three
21 and four under paragraph A.

22 And the reason behind that is we have found that
23 some product manufacturers were claiming an exemption
24 based on a chemical or compound that was a part of their
25 product, but it was at a concentration that was too low to

1 trigger registration. So in order for us to make a
2 determination of whether it legitimately qualified for the
3 exemption because it's regulated under RCRA or regulated
4 as a hazardous material, we needed to get this
5 documentation from the product manufacturer in order to
6 verify that, yes, it's appropriately exempted because it
7 is a hazardous material and does have to comply with these
8 transportation restrictions, or it is a registered product
9 under RCRA.

10 MR. SIMONI: May I restate that to make sure I
11 get it? So the way subdivision B is proposed to be
12 implemented, it would only apply to items 3 and 4 under
13 sub A?

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: Yes.

16 MR. SIMONI: So if you are a food or cosmetic
17 packager, you do not have to go through subdivision B and
18 go through that affirmative step of requesting an
19 exemption?

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
21 LEAON: Yes.

22 MR. SIMONI: Thank you. That clarifies.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: Harllee, is there anything you want to add to
25 that? Anything else on the exemption?

1 MS. LIVINGSTON: Can I ask a question on the
2 prior comment?

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
4 LEAON: Yes.

5 MS. LIVINGSTON: Because that subject has come up
6 before. I just don't think it's clear that that's how it
7 applies. So maybe some clarification.

8 MR. LARSON: I think we're going to revise it.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
10 LEAON: Yes. They'll clarify that.

11 Section 17948, page 47, confidential or trade
12 secret information, added language to that to make it
13 clear that any confidential or trade secret information
14 will be subject to the disclosure provisions of Section
15 17041 of this title.

16 We do get public requests for information. And
17 we want to clarify that the process we go through to
18 disclose information requires us that we get approval from
19 the product manufacturer before that information is
20 released.

21 MR. LARSON: Perfect.

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
23 LEAON: Okay. We discussed container determination
24 appeals already.

25 Violations and penalties, Section 17949, on page

1 51.

2 MR. LARSON: Comments?

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: Yes.

5 MR. LARSON: Sort of an overarching comment that
6 I noted early in the meeting today about what I perceive
7 to be the benefits of reinstituting the compliance
8 agreements process, which I believe the net effect was
9 when it was in place to assist those businesses who, for
10 whatever reason, were found to not be in compliance with
11 this law, with the intent of taking specific actions
12 within a specified period of time to come into compliance
13 before they were subject to fines and penalties.

14 There's precedent for this in the Waste Board's
15 compliance agreements with the local jurisdictions in
16 California who are required, as you know, by AB 939 to
17 achieve 50 percent diversion. There's a process they can
18 go through to demonstrate good faith effort, and a
19 schedule for compliance with technical assistance from
20 Board staff to try to help that jurisdiction for its
21 diversion.

22 I think it's appropriate that the private sector
23 be offered the same type of assistance and the same
24 process to get them into compliance. If they don't get
25 into compliance, then you go to your chart. But right now

1 basically it's go to column A, read violation B, multiply
2 times X grams, and then you can sit down and negotiate I
3 know. But it I believe would result in more achievement
4 of what the intent of the law is to bring these companies
5 all into compliance if you utilize that compliance
6 agreement approach. Don't get rid of this. But just set
7 a process in front of it to assist companies. And that
8 would be my overarching.

9 One comment I would like to add on the chart on
10 page 52 -- maybe it applies to others, too, but we were
11 particularly impacted by this one. Where a product
12 manufacturer did not submit the certification on a due
13 date. And Subsection E, there's several penalty
14 assessments based upon the period of time that you're
15 late. One to 30 days is \$1,000. And then it jumps up to
16 five and goes all the way to 50.

17 I would ask that in the event that -- because you
18 initiated the request for the certification, you know
19 whether a company did respond in time. That within ten
20 days of the deadline for that submittal that the Board
21 inform that company that they did not meet their deadline.
22 And in 30 days from that date, they will be subject to
23 this fine. Because basically we had an instance where
24 some records were lost in transport, and we were 33 days
25 late. So we're going to go from the 1,000 to the 5,000

1 for the three-days' violation. So some notification
2 wherever it's appropriate before a fine is set would be
3 appreciated. Thank you.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
5 LEAON: Okay.

6 MR. BUSARD: This is Tom from Plastipak.

7 It's a follow up to Jack's comment earlier as
8 well on the consistency of the information between product
9 manufacturer and the container manufacturer. It says here
10 in the 1,000 to 50,000 penalty section the third one down
11 that inconsistent in the information between product
12 manufacturer and container manufacturer could be a reason
13 for a fine. And I would submit as we talked about earlier
14 that the consistency and information and timely will
15 probably always take extrapolating. Maybe that means the
16 information doesn't come directly from the container
17 manufacturer to the state.

18 I know on the ones that we fill out, we send
19 those back to our customers, and then they put that
20 together with their submission. And I think that's
21 probably the best way to do it to create the least amount
22 of confusion. And more just legally, I mean, we're going
23 to send information and it jumps because of the dates and
24 the inventory situation we talked about earlier. So we
25 almost always will be subject to a fine on this one. And

1 I'm not just saying us as our company. Any manufacturer
2 that doesn't put the product on the filling line and go
3 right directly into the market.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
5 LEAON: Tom, can you clarify for me the change you'd like
6 to see here in the item?

7 MR. BUSARD: I don't know -- when it says
8 inconsistencies in information on the third section of
9 description of violation, inconsistencies in information
10 between product manufacturer and container manufacturer,
11 lack of signatures, math, and accuracy.

12 Maybe, Jack, you have a suggestion.

13 MR. MCANANY: I think what Tom -- what I heard
14 Tom saying that's just additional reason to go back to the
15 container manufacturer certification form and line out the
16 number of containers.

17 MR. BUSARD: Correct.

18 MR. MCANENY: And I would assume the remaining
19 intent here would be if a container manufacturer said
20 there's ten grams of PCR, but the product manufacturer
21 says there's 20, obviously there's reason for the Board to
22 take action. But if we line up the container manufacturer
23 number of containers supplied, I think that would help
24 eliminate some concern about that language.

25 MR. BUSARD: Yeah. That's a good point.

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: Okay. I do want to talk about the issue George
3 brought up on the compliance agreements. And that is
4 really a parking lot issue that we can't address through
5 the regulations, but certainly something we can address
6 through the Board policy issue. The Board has discretion
7 about how it wants to pursue enforcement actions and
8 making determinations on compliance agreements or
9 settlement agreements as we've been calling them since we
10 completed the '01 certification.

11 A little background on that. I believe it was
12 from the '97 through '99 certification we used the
13 compliance agreements.

14 MR. HOWARD: Correct.

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

16 LEAON: And one of the challenges that we had with that
17 was the degree of cooperation we got amongst the product
18 manufacturers that were in compliance agreements was
19 really quite variable. It really depended on how much the
20 product manufacturer wanted to work with us. The issue
21 behind it was they felt there was no teeth behind it, so
22 some product manufacturers did take advantage of that and
23 were not responsive. And we couldn't get the information
24 from them.

25 So with the 2001 certification, we decided to

1 take a little more aggressive approach on enforcement
2 under what we call the settlement agreements. And I think
3 whether we call them settlement or compliance agreements
4 is really a matter of semantics. But what we did through
5 that process was we suspended the penalties. If the
6 product manufacturer was not compliant, we said you're
7 responsible for these penalties, but we will suspend those
8 penalties pending on the demonstration of compliance in
9 '05 the certification. We're still in that process of
10 completing that certification. And there are several
11 companies that were in settlement agreements that we're
12 still gathering their information from. But we've been
13 much more successful in getting information and getting
14 companies' commitments and actually signing the settlement
15 agreement and adhering to what they've signed. From our
16 perspective, it's been a much more effective enforcement
17 tool. But it still does provide opportunity for product
18 manufacturers to come into compliance without being
19 subject to penalty.

20 MR. LARSON: Maybe I can satisfy what I consider
21 my concern if you would clarify something on process. And
22 I'm just not sure how this plays out.

23 Company A is deemed not to be in compliance. And
24 based on the reporting, you can go to your chart and
25 determine what a penalty would be. Process wise, do you

1 go to that chart, calculate the penalty, then distribute
2 that to the world and then say, Company A, now you can
3 come in and we'll negotiate on this? Or do you determine
4 by the information what the penalty may be, and then you
5 call the company in to negotiate on any mitigating
6 circumstances that might impact that? And then that
7 number goes to the world as it were or goes to the Board
8 for a penalty? It's a critical difference, because it's
9 kind of like trying to amend a bill. You know, once it's
10 in print, it's darn hard to get it changed.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
12 LEAON: And the process we used was staff would determine
13 what we thought was the penalty based on the information
14 in the certification. And then we would negotiate with
15 the company to come to a settlement. And then that's the
16 number that became the official number in the record.

17 MR. LARSON: That's at the staff level with the
18 legal staff included.

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
20 LEAON: Yeah. The Board delegated authority to the
21 Executive Director to sign those settlement agreements.

22 MR. LARSON: Okay. We are just waiting for our
23 fine.

24 STAFF COUNSEL DYSON: There's not any provision
25 because of the numbers in the statute that would allow for

1 the good faith that we have on the other statutes.
2 There's really -- I don't see how there could be a
3 provision for good faith when you have the ten percent and
4 you have the specific things in the statute that you have
5 to comply with.

6 MR. LARSON: Well, there are instances, as you're
7 probably aware, that the movement of companies through
8 acquisitions, mergers, et cetera, place a particular
9 company. And I'll use my client. ITW owns 650 companies
10 and acquires and offs if you will 50 companies a year.
11 It's a Fortune 200 mega billion-dollar business.
12 Sometimes we inherit by purchasing a company the
13 performance of that company prior to our acquisition. But
14 yet our name is on that product at the time we get
15 contacted, and that's a mitigating circumstance to me. I
16 mean, there are numerous instances like that that call out
17 for something other than a prescriptive you have to do it
18 this way and here's your penalty. Same thing with the ALJ
19 when we get there.

20 MR. POLLACK: This is Randy Pollack.

21 I think that's one of the circumstances we're
22 trying to avoid is companies going to an ALJ which will
23 consume everybody's time. And I think that's what George
24 is trying to get at, that in the past we've been able to
25 sit down with staff and say whether a company was sold or

1 not or we're going to be contacting our suppliers. We
2 believe we had some technological difficulties in doing
3 that. But instead of going through and getting all the
4 research and going through the ALJ process, can we reach
5 an agreement within a year or two, we're going to report
6 back to you and tell you what we have done in order to
7 rectify what you see as an issue.

8 MR. LARSON: While there may not be a specific
9 statute that says good faith effort, it is clear -- and
10 correct me if I'm wrong. And I'd like to see it in these
11 regulations the Board within its authority not to assess a
12 fine. I mean, if they don't want -- if staff recommends a
13 \$10,000 fine, we have within our rights to take our issues
14 up the chain of command here at this agency and talk to
15 Board members. And if we make a compelling enough
16 argument, the Board has the authority to reduce or
17 eliminate a fine, I believe. Is that correct?

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
19 LEAON: I'm not certain about that.

20 STAFF COUNSEL BRANCH: I don't want to do this.

21 MR. LARSON: So staff control this program, not
22 the Board.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: The statute --

25 STAFF COUNSEL BRANCH: I mean, the Board is here

1 to make overarching policy calls, and the staff is the one
2 that carries out the program. I mean, the Board isn't
3 pulling the strings every single day on that.

4 MR. LARSON: Well, these are important issues
5 about not just the fines but --

6 MR. POLLACK: Follow-up on George. Right now I
7 know there's authority being given to the Executive
8 Director to sign off on settlement agreements. Does that
9 mean none of these issues are going to be brought before
10 the Board, or does he sign off subject to the approval of
11 the Board?

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
13 LEAON: As you were saying, Randy, I think the point is we
14 want to avoid having to go through an ALJ process. And
15 the Board delegated its authority to Mark to sign off on
16 settlements. If we can't reach a settlement, then we
17 would go to the ALJ, and that decision has to come back to
18 the Board.

19 MR. LARSON: Maybe that's where the proper
20 hearing is. Does that get us to ALJ?

21 MR. POLLACK: I'll start. With the ALJ, I know
22 there have been some changes that you had made. And one
23 of them states, as soon as I find it, talks about
24 providing documented evidence.

25 MS. LIVINGSTON: What page?

1 MR. POLLACK: I'm searching for it.

2 MR. HOWARD: 59. Last page.

3 MR. POLLACK: At the very top it talks about
4 factors modifying or reducing penalties for violations,
5 and then you have included the word, "documented
6 evidence." Now an ALJ is the fact finder listening to the
7 evidence that is presented to him. I'm not quite sure
8 what you were trying to get by adding the word document.
9 Because I believe it's in the discretion of the ALJ and
10 listening to witnesses to determine whether or not the
11 case has been made. So that's the first point.

12 STAFF COUNSEL BRANCH: You're talking about sub
13 3?

14 MR. POLLACK: It was right at the beginning of
15 the very top. Now, additionally, you know, it talks about
16 in number four about history of previous compliance or
17 non-compliance.

18 STAFF COUNSEL BRANCH: I'm okay with striking
19 documenting.

20 MR. POLLACK: And you know with number four, it
21 brings into where you cross out number three talking about
22 the cooperation that may have been ongoing with the Board
23 and staff in the past. That has just been eliminated.

24 On the last point -- and I'd like to clarify
25 number five you talk about one of the factors is the

1 economic advantage of not complying with this article. I
2 think that needs to be changed is talk about the economic
3 impact to the company for not complying. Because that is
4 why I think we should be looking at that. Basically,
5 you're just setting it up. If someone is saving money by
6 not switching, therefore they are probably a bad person.
7 And I think it's just sort of directed in that fashion
8 when you look at number five. Where you may have a very
9 small company that can't afford to make the change. I'm
10 not quite sure what sort of language and maybe more of a
11 neutral language. But considering the impact of the
12 change to the company.

13 MR. SABOURIN: Why not just strike the whole
14 thing?

15 MR. POLLACK: That's fine with me, too. And
16 plus, the ALJ has the discretion anyways, because it says
17 at the top it says it's not limited to.

18 STAFF COUNSEL BRANCH: Jumping back to number 3
19 we crossed out, I think I crossed that out because degree
20 of cooperation or non-cooperation seemed just a little
21 mushy. What does that mean?

22 MR. LARSON: I would say tighten that up.

23 STAFF COUNSEL BRANCH: We get on a conference
24 call and everybody is happy with the conference.

25 MR. LARSON: Taking specific actions in response

1 to the requirements of implementing or complying with this
2 law. It was mentioned earlier about scofflaws who
3 wouldn't respond to it, wouldn't cooperate. I would say
4 unequivocally -- and RPPC staff people I believe would
5 verify that at least for the purposes of Illinois Tool
6 Works' companies, we probably are a pain in the leg
7 because we are here all the time trying to work things out
8 and be cooperative. And I think that should be taken note
9 of. And if the other people are not --

10 STAFF COUNSEL BRANCH: I don't disagree with
11 that. What I'm looking for is a better way of saying it.
12 So if you guys have ideas --

13 MR. LARSON: I'll draft some language for your
14 consideration.

15 And then two final points. I think depending on
16 how many we end up with, there ought to be another last
17 item here that says something to the effect that any other
18 mitigating circumstance. Because regardless of how you
19 fine tune these, they cannot cover the universe of all the
20 circumstances that may exist to which the ALJ could impact
21 or influence ALJ's decision on what his or her
22 recommendation may be. So however that might be
23 expressed, we as the regulated community should be allowed
24 to bring any information, all of this and any other
25 information we feel is pertinent.

1 STAFF COUNSEL BRANCH: It says such as but not
2 limited to. So I'm thinking that language was put in
3 there so it's clear the ALJ, you, or the Board, you're not
4 limited to considering these things.

5 MR. LARSON: As long as that's understood.

6 MR. POLLACK: This is Randy Pollack.

7 One other question is at the very top where it
8 says factors and modifying or reducing penalties. Do you
9 interpret that they can reduce it to zero?

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
11 LEAON: Well, the way the violations and penalties are set
12 up, there's a minimum. So if there's a violation, there
13 would be a minimum penalty associated with it.

14 MR. POLLACK: That will be of concern to us.

15 MR. LARSON: Yes. Why would it -- if it's not
16 within the Board's purview to eliminate or remove a
17 penalty, why would it not be within the administrative law
18 judge's authority to eliminate or remove a penalty as well
19 as recommend one?

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
21 LEAON: Maybe the way to look at it is make the
22 determination of whether there's violation.

23 MR. LARSON: And if there's no violation, you
24 don't go to the chart.

25 MR. POLLACK: Well, I would look at it, because

1 there could be different degrees of violation. Because
2 you could be looking to see whether you cooperated.
3 Someone who didn't cooperate that didn't turn in their
4 data and someone who said, "My bookkeeper has been off for
5 a year and a half. I'm only one person." So I think that
6 may be a difficult section that we just need to look at.

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

8 LEAON: All right.

9 MR. LARSON: Other than that, great job.

10 MR. POLLACK: A lot of work in a short amount of
11 time.

12 MR. LARSON: Terrific job.

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

14 LEAON: Are there any other issues, comments, or topics
15 that anyone on the phone or in the room would like to
16 revisit or bring up? Because I think we can say we're
17 into our open comment period.

18 All right. Well, in that case, let's go over the
19 next steps and we'll get you out of here early.

20 --o0o--

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: So what we'll do next is take your feedback and
23 develop a revised draft of the regulations. And we'll get
24 that back out as soon as possible, but no later than mid
25 June. And at that point we would like to release it --

1 well, we will be releasing it to a wider stakeholder
2 audience. We'll send out a message over the list serve
3 that they're available for public review and comment. And
4 we'll take comments through the end of June. And we have
5 a workshop scheduled for the larger stakeholder group on
6 June 26th. Do you know what room?

7 MR. BERUMAN: In the Coastal Hearing Room.

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: That will be in the Coastal Hearing Room.

10 MR. BERUMAN: I think it's 9:00 a.m. as well.

11 MR. SABOURIN: What day is that?

12 MR. HOWARD: Tuesday.

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

14 LEAON: Is a Tuesday?

15 MR. SABOURIN: How long is that expected to be?

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

17 LEAON: Well, it could go all day. It depends on how many
18 people show up.

19 MR. SABOURIN: It's not going to be a feedback.

20 It's going to be --

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: Taking comments.

23 MR. BUSARD: How big a group are you going to
24 send the information out to?

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: We'll send a message out over the list serve.

2 MR. BERUMAN: Which is about a thousand people.

3 MR. SABOURIN: Do you expect that to be available
4 by phone or web cast?

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: Yes. We'll cover probably a similar process.
7 Walk people through the regulations and then take
8 comments. From that point, we need to make further
9 changes and revisions based on the comment and input we
10 get during the next review period with the objective of
11 going to the Board in either August or September for the
12 Board's consideration of the final draft of the
13 regulations. So that if the Board should approve them at
14 that point, we'll take them to the Office of
15 Administrative Law to initiate the formal public review
16 and comment period. And from that point, we would have
17 one year to complete the rulemaking.

18 MR. SABOURIN: Do you not see a reason to meet in
19 July?

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

21 LEAON: Yeah. We do not have an advisory group meeting --
22 well, we don't have another advisory group meeting
23 scheduled. The next meeting will be the larger
24 stakeholder --

25 MR. SABOURIN: You mentioned here somewhere

1 possibly in July.

2 MR. BUSARD: Something after the informal
3 workshop.

4 MR. BERUMAN: I don't think there was any more
5 advisory group meetings.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
7 LEAON: There will be the Committee meeting in September.

8 MR. BERUMAN: If you are in the room or on the
9 phone and you want to get the earlier e-mail copy of the
10 regs with the comments we've all discussed here, make sure
11 that your e-mail address is on the list that has been
12 going around that Jan is holding up over there. So make
13 sure that you got that, or else we can't get it to you.
14 Or if you're on the phone, send us an e-mail to
15 rppc@ciwmb.ca.gov.

16 MR. YEDIDSION: Is it possible to include
17 everybody who was e-mailed for today's meeting on that
18 list?

19 MR. BERUMAN: If you got an e-mail today, you're
20 already included.

21 MR. SABOURIN: So we're on already?

22 MR. BERUMAN: If you've been getting our advisory
23 group e-mails, you're included.

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
25 LEAON: Okay. If you have written comments that you would

1 like to get us with specific language, if you can get that
2 to us as soon as possible, perhaps within the next week,
3 we would greatly appreciate it.

4 MR. BERUMAN: You can e-mail them to
5 rppc@ciwmb.ca.gov or fax them to area 916-319-7772,
6 attention Jan Howard.

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

8 LEAON: All right. Well, that concludes our meeting. I
9 want to thank everybody's participation and appreciate
10 very much your input into this process.

11 (Thereupon the California Integrated Waste
12 Management Board adjourned at 3:08 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 27th day May, 2007.

15

16

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